S. HRG. 100-871

TALLGRASS PRAIRIE NATIONAL PRESERVE

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1967

TO PROVIDE FOR THE ESTABLISHMENT OF THE TALLGRASS PRAIRIE NATIONAL PRESERVE IN THE STATE OF OKLAHOMA, AND FOR OTHER PURPOSES

MAY 26, 1988

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
90-551 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S311-20

COMMITTEE ON ENERGY AND NATURAL RESOURCES

J. BENNETT JOHNSTON, Louisiana, *Chairman*

DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
JOHN MELCHER, Montana
BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico
TIMOTHY E. WIRTH, Colorado
WYCHE FOWLER, JR., Georgia
KENT CONRAD, North Dakota

JAMES A. McCLURE, Idaho
MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, JR., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CHIC HECHT, Nevada
DANIEL J. EVANS, Washington

DARYL H. OWEN, *Staff Director*
D. MICHAEL HARVEY, *Chief Counsel*
FRANK M. CUSHING, *Staff Director for the Minority*
GARY G. ELLSWORTH, *Chief Counsel for the Minority*

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

DALE BUMPERS, Arkansas, *Chairman*
JEFF BINGAMAN, New Mexico, *Vice Chairman*

JOHN MELCHER, Montana
BILL BRADLEY, New Jersey
TIMOTHY E. WIRTH, Colorado
WYCHE FOWLER, JR., Georgia
KENT CONRAD, North Dakota

MALCOLM WALLOP, Wyoming
LOWELL P. WEICKER, JR., Connecticut
MARK O. HATFIELD, Oregon
PETE V. DOMENICI, New Mexico
FRANK H. MURKOWSKI, Alaska
CHIC HECHT, Nevada

J. BENNETT JOHNSTON, and JAMES A. McCLURE are Ex Officio Members of the Subcommittee

THOMAS B. WILLIAMS, *Senior Professional Staff Member*
ELIZABETH J. NORCROSS, *Professional Staff Member*

CONTENTS

	Page
S. 1967	2

STATEMENTS

Adkisson, Ralph R., member, Osage Tribal Council	87
Bellmon, Hon. Henry, Governor, State of Oklahoma	20
Bolton, Crayton O., chairman, Friends of the Osage	191
Boren, Hon. David L., U.S. Senator from Oklahoma	28
Bumpers, Hon. Dale, U.S. Senator from Arkansas	1
Cushman, Charles S., executive director, National Inholders Association and Multiple Use Land Alliance	197
Edwards, Hon. Mickey, U.S. Representative from Oklahoma	35
Freeman, Mark, Jr	120
Graves, J.M., past president, Oklahoma Independent Petroleum Association	100
Holcombe, Lee, chairman, Tallgrass Prairie Preserve Task Force	65
Kennington, John, chairman, Oklahoma Audubon Council	165
Martinez, David, Southern Plains regional vice president, Oklahoma Chapter, Sierra Club	153
Mattingly, Stanlee Ann, member, Osage Indian Tribe	170
Mott, William Penn, Jr., Director, National Park Service, Department of the Interior	39
Nickles, Hon. Don, U.S. Senator from Oklahoma	23
Payne, Harvey, Northeast regional vice president, Oklahoma Wildlife Federation	75
Reed, Melvin, past president, Osage County Cattlemen's Association	125
Ricketts, William B., president, Osage County Cattlemen's Association	114
Shoemake, Bransford Hunt, executive vice president, the Tallgrass Prairie Preserve Association	138
Supernaw, Bill, chairman, Osage County Democratic Central Committee	176
Wachtman, Michael, mayor, Pawhuska, OK	58
Whetsell, William C., president, Willmar, Inc	149
Williams, Joseph H., chairman, board of trustees, Oklahoma Chapter, the Nature Conservancy	49
Young, Vernon, superintendent, Shidler Public School	247

APPENDIX

Responses to additional questions	261

TALLGRASS PRAIRIE NATIONAL PRESERVE

THURSDAY, MAY 26, 1988

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Dale Bumpers presiding.

OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator BUMPERS. The committee will come to order.

The purpose of the hearing today is to receive testimony on S. 1967, a measure currently pending before the Subcommittee on Public Lands, National Parks and Forests. S. 1967 would establish the Tallgrass Prairie National Preserve in Osage County, OK.

The vast American prairie historically covered millions of acres from the Ohio Valley north to Canada and south into Texas, and from the Ozark Mountains to the foothills of the Rockies. Authorities agree that few remnants now remain of this once prevalent sea of grass which awed explorers, poets and settlers alike.

The establishment of the tallgrass preserve has been under consideration since the 1930's and has long been a goal of the National Park Service. I applaud the Oklahoma Senators for seeking protection of the last 1 to 3 percent of the American tallgrass ecosystem which still remains. I am, however, well aware that strong and sincere opinions are held by both opponents and proponents of this bill. I would, therefore, like to assure you that I will thoughtfully and carefully consider your testimony today before taking any further action on this bill.

I want to take this opportunity to welcome those of you who will be testifying this morning. I know that many of you have traveled a long distance to share your views with us. Since there are so many witnesses, I must ask you to limit your testimony to 3 to 5 minutes, and in that way we can assure that all of you will have a chance to speak before we have to adjourn.

[The text of S. 1967 and a statement from Governor Bellmon of Oklahoma follows:]

II

100TH CONGRESS
1ST SESSION

S. 1967

To provide for the establishment of the Tallgrass Prairie National Preserve in the State of Oklahoma, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18 (legislative day, DECEMBER 15), 1987

Mr. BOREN (for himself and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for the establishment of the Tallgrass Prairie National Preserve in the State of Oklahoma, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSE AND ESTABLISHMENT.

(a) PURPOSE.—In order to—

(1) preserve for the inspiration, education, and benefit of present and future generations a unique and nationally significant example of tallgrass prairie in a manner that depicts for the visiting public the vast, sweeping, and open scenes characteristic of the tallgrass ecology;

(2) foster the study and application of management practices applicable to the restoration and preservation of indigenous tallgrass prairie species;

(3) interpret the history of the arrival of the Osage Indian Tribe to the tallgrass prairie area and its use by the Tribe continuously for more than 100 years and to interpret the production of oil and gas from the Osage Indian Reservation since the early 1900's; and

(4) encourage an appreciation of our Western American heritage which was and continues to be intimately bound to the use of prairie grasslands for cattle grazing,

there is hereby established the Tallgrass Prairie National Preserve (hereafter in this Act referred to as the "Preserve").

(b) ESTABLISHMENT.—(1) The Preserve shall include the lands, waters, and interests therein within the boundary generally depicted on the map entitled "Boundary Map, Tallgrass Prairie National Preserve", numbered P-TGP/80,000-C and dated November 1987 which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The Secretary of the Interior (hereafter in this Act referred to as the "Secretary") shall file a copy of any map depicting any revisions to the

boundary of the Preserve, with the appropriate offices of Osage County, Oklahoma.

(2) After reasonable notice in writing to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, the Secretary may, by publication of a revised boundary map or other description in the Federal Register, make minor revisions in the boundary of the Preserve, consistent with the purposes set forth in subsection (a), except that the boundary of the Preserve may not be increased to encompass more than 50,000 acres in fee and 50,000 acres in easements.

SEC. 2. PROPERTY ACQUISITION.

(a) GENERAL RULE.—(1) The Secretary is authorized, subject to the provisions of this section, to acquire lands, waters, and interests therein and improvements thereon within the boundary of the Preserve by donation, purchase with the consent of the owner, transfer from any other Federal agency without a transfer of funds, or exchange. The Secretary shall apply normal Federal acquisition procedures, which shall include a process for determining fair market value. Property owned by a State or any political subdivision thereof may be acquired by donation or exchange.

(2) The Secretary may acquire, by any of means described in paragraph (1), not to exceed 10 acres outside the

boundary of the Preserve in the city of Pawhuska, Oklahoma, for use and development as an administrative and information site.

(3) Nothing in this section shall be construed to prevent the use by the Secretary of eminent domain proceedings as a necessary means to obtain clear and marketable title.

(4) After acquisition of any land in fee under this section, the Secretary shall develop, in consultation with the Range Management Committee established in section 8, a fire protection plan to protect lands within and outside the Preserve.

(b) MINERAL ESTATE RETAINED BY OSAGE TRIBE.—The Secretary may not acquire any interest in the mineral estate within the boundary of the Preserve, it being the express intent of the Congress that the beneficial interest in such mineral interest as is held on the date of enactment of this Act in trust for the Osage Tribe shall continue to be so held in trust.

(c) RESERVATION OF IMPROVED PROPERTY BY OWNERS.—(1) The owner of improved property acquired by the Secretary may, as a condition of such acquisition, retain for himself and his heirs and assigns a right of use and occupancy of the improved property for noncommercial residential purposes or for ranching purposes for a definite term of not more than 25 years or, in lieu thereof, for a term ending at

the death of the owner or the death of his spouse, whichever is later. The owner shall elect the term to be reserved. Unless the property is wholly or partially donated to the United States, the Secretary shall pay the owner the fair market value of the property on the date of acquisition less the fair market value on that date of the right retained by the owner.

(2) A right retained pursuant to this subsection shall—

(A) be subject to termination by the Secretary upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act; and

(B) it shall terminate by operation of law upon the Secretary's notifying the holder of the right of such determination and tendering to him an amount equal to the fair market value of that portion of the right which remains unexpired.

(3) Whenever an owner of property elects to retain a right of use and occupancy as provided in this subsection, such owner shall be deemed to have waived any benefits or rights accruing under sections 203, 204, 205, and 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (845 Stat. 1894), and for the purposes of such sections such owner shall not be considered a displaced person as defined in section 101(6) of such Act.

(4) As used in this subsection, the term "improved property" means a detached, one-family dwelling—

(A) which serves as the owner's permanent place of abode at the time of acquisition construction of which was begun before January 1, 1987; and

(B) which is used for noncommercial residential purposes or for ranching purposes.

Improved property includes such land in the same ownership as the dwelling, as the Secretary deems to be reasonably necessary for access thereto and continued use thereof for residential or ranching purposes and any structures accessory to the dwelling which are situated on such land.

(d) MANAGEMENT AND USES WITHIN EASEMENT AREA.—Within that area of the Preserve depicted on the map referred to in section 1 as the Easement Area, the Secretary may acquire only interests in lands, waters, and improvements sufficient to ensure that—

(1) management practices, including grazing and the application of herbicides and burning of vegetation, shall be conducted in accordance with a plan that is mutually agreeable to the Secretary and the surface owner;

(2) existing ranching uses will continue and no other commercial use will be made of the property by the surface owner; and

(3) new construction will be limited to reasonable improvements to existing structures for noncommercial residential or ranching use and new structures required for ranching use compatible with the use as existed on the date of enactment of this Act.

In acquiring lands, waters, and improvements under this subsection, the Secretary may expend not to exceed 60 percent of the fair market value of fee simple title.

(e) REMNANTS OUTSIDE BOUNDARY.—The Secretary may acquire uneconomic remnants outside the boundary of the Preserve in order to facilitate the acquisition process. Any such lands so acquired shall be exchanged for lands within the boundary or sold and the proceeds used for the purchase of lands and interests in lands within the boundary of the Preserve.

(f) ACCESS BY PRIVATE OWNERS.—Owners of non-Federal property within the Preserve shall be provided reasonable and unimpeded access to their property across Federal lands, consistent with the purposes of this Act.

SEC. 3. ADMINISTRATION.

(a) APPLICABLE LAW.—The Secretary shall administer the lands, waters, and interests therein acquired pursuant to this Act in accordance with the provisions of this Act and the Act of August 25, 1916 (39 Stat. 535).

(b) GRAZING PERMITS.—The Secretary shall, in accordance with a plan developed cooperatively with the range management committee established in section 8, issue permits allowing the holder of the permit to graze livestock on lands designated in the plan. Lands subject to grazing shall not include lands within the Easement Area depicted on the map referred to in section 1. The Secretary shall charge a reasonable fee for any such permit.

(c) HUNTING AND FISHING.—The Secretary, in accordance with applicable Federal and State laws, and in accordance with a plan developed cooperatively with the Oklahoma Department of Wildlife Conservation and the Range Management Committee, shall permit hunting and fishing on lands and waters under his jurisdiction within the Preserve. The Secretary may, at such times as are appropriate, designate zones where, and establish periods when, no hunting, fishing, or entry may be permitted for reasons of public safety, administration, floral or faunal protection and management, or public use and enjoyment. Except in emergencies, any regulations prescribing such restrictions relating to hunting or fishing shall be put into effect only after consultation with the Oklahoma Department of Wildlife Conservation.

(d) CRIMINAL JURISDICTION.—The United States and the State of Oklahoma shall have concurrent criminal jurisdiction within areas acquired pursuant to section 2.

(e) OSAGE TRIBAL MUSEUM.—Pursuant to a cooperative agreement with the Osage Tribe, the Secretary is authorized to provide technical assistance and advice with respect to the development, operation, and interpretation of a Tribal museum in Pawhuska.

SEC. 4. OIL AND GAS ACTIVITIES.

(A) CURRENT LAW NOT SUPERSEDED.--Nothing in this Act shall be deemed to supersede or modify the provisions of the Act of June 28, 1906 (34 Stat. 539), as amended and supplemented by the Act of March 2, 1929 (45 Stat. 1478) or regulations of the Secretary issued pursuant thereto.

(b) APPLICABLE LAW.—(1) Oil and gas exploration, development, and production activities within the Preserve shall be subject to—

(A) regulations of the Secretary, acting through the Assistant Secretary for Indian Affairs, promulgated pursuant to the Act of June 28, 1906; and

(B) regulations of the Administrator of the Environmental Protection Agency, promulgated pursuant to the Clean Air Act and the Clean Water Act.

(2) National Park Service regulations applicable to oil and gas activities shall not apply within the Preserve and the National Park Service shall have no rights to oil and gas beyond those of any other surface owner.

SEC. 5. RESEARCH FACILITY.

(a) ESTABLISHMENT OF FACILITY.—The Secretary shall establish and operate a facility within the Preserve or the administrative site for the purpose of conducting directly or by contract, research into the restoration, preservation, and management of tallgrass prairie flora and fauna.

(b) CONTRACT AUTHORITY.—The Secretary may enter into contracts with public or private educational institutions or other qualified individuals or entities pursuant to which such institutions, individuals, or entities may conduct research, including experimental management techniques, on lands and waters within the Preserve under the jurisdiction of the Secretary. The Secretary may, pursuant to such contracts, make available temporarily lands and facilities to the contractor.

(c) RESEARCH AVAILABLE TO PUBLIC.—The results of any research conducted pursuant to this section shall be made available to the public.

(d) USE OF APPROPRIATED FUNDS.—Funds appropriated to the Secretary for operation of the Preserve shall be available for expenditure for research services authorized by this section.

SEC. 6. GENERAL MANAGEMENT PLAN.

(a) PLAN.—Within 3 years from the date of enactment of this Act, the Secretary shall submit to the Committee on Interior and Insular Affairs of the House of Representatives

and the Committee on Energy and Natural Resources of the Senate a general management plan for the Preserve, prepared in accordance with section 12(b) of August 18, 1970 (84 Stat. 825; 16 U.S.C. 1a–1—1a–7) and in consultation with the Advisory Commission established in section 7.

(b) CONTENTS OF PLAN.—The general management plan shall—

(1) specifically address ways in which the Secretary shall interpret the tallgrass prairie ecosystem, the history of the Osage Tribe's association with the area, the discovery and production of oil and gas on the Osage reservation, and the history of cattle ranching and cattle drives;

(2) include a resources management plan for tallgrass prairie grasslands management; and

(3) designate a north entrance to the Preserve from Highway 18 and a visitor center located in the southern fee unit.

SEC. 7. ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is hereby established the Tallgrass Prairie National Preserve Advisory Commission (hereafter in this Act referred to as the "Commission"). The Commission shall be composed of 17 members appointed by the Secretary as follows:

(1) three members recommended by the Osage Tribe;

(2) three members appointed by the Secretary, at least one of whom shall have expertise in tallgrass prairie management;

(3) two members recommended by the Governor of Oklahoma;

(4) one member recommended by the Oklahoma State Cattlemen's Association;

(5) one member recommended by the Osage County Cattlemen's Association;

(6) one member recommended by the Director of the Oklahoma Department of Wildlife Conservation;

(7) one member with professional training in range management recommended by the State Soil Conservation Service;

(8) one member with professional training in range management recommended by the Dean of Agriculture of Oklahoma State University;

(9) one member recommended by the Osage County Commission;

(10) one member recommended by the Oklahoma Independent Petroleum Association;

(11) one member recommended by the Oklahoma Wildlife Federation; and

(12) one member recommended by the Oklahoma Department of Tourism.

(b) TERMS OF MEMBERS.—The terms of the Commission members shall be 3 years, except that for initial appointments under paragraphs (1) through (3), one member shall serve for a term of 1 year and one member shall serve for a term of 2 years, and except for the initial appointments under paragraphs (4), (6), (8), and (10), whose terms shall be 2 years.

(c) RESPONSIBILITIES AND ADMINISTRATION.—(1) The Commission shall elect its own chairman and adopt its own bylaws. Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(2) Members of the Commission shall serve without compensation as such, except that the Secretary is authorized to pay expenses reasonably incurred by the Commission in carrying out its responsibilities under this Act.

(3) The Secretary shall consult with the Commission on matters relating to the acquisition of lands, waters, and interests therein, and the management and development of the Preserve.

SEC. 8. RANGE MANAGEMENT COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established a Range Management Committee, which shall be composed of 9 members appointed by the Secretary as follows:

(1) one member from those recommended in section 7(a)(1);

(2) two members from those recommended in section 7(a)(2);

(3) one member as recommended in section 7(a)(4);

(4) one member as recommended in section 7(a)(5);

(5) one member as recommended in section 7(a)(6);

(6) one member as recommended in section 7(a)(7);

(7) one member as recommended in section 7(a)(8); and

(8) one member as recommended in section 7(a)(9).

(b) MANAGEMENT PLAN.—The Secretary, through the National Park Service shall, with the concurrence of the Range Management Committee, develop a plan to govern livestock grazing pursuant to permits issued by the Secretary under section 3(b). This plan shall—

(1) provide reasonable protection to the holders of grazing leases who held such leases on the effective date of this Act;

(2) delineate length, terms, and conditions to be included in any grazing permit;

(3) determine what lands shall be the subject of grazing permits;

(4) provide a method to determine reasonable fees;

(5) determine payment of compensation to owners of non-Federal land within the Preserve who may suffer a loss in income from grazing leases due to the issuance of a grazing permit or permits by the Secretary; and

(6) provide for the reasonable fencing of non-Federal land within the Preserve upon the request of the property owner.

(c) RECOMMENDATIONS TO SECRETARY.—The Secretary shall consult with the Range Management Committee with respect to the resource management plan for tallgrass prairie management to be prepared pursuant to section 6. Such plan may authorize the following management tools:

(1) grazing by domestic and native animals;

(2) prescribed burning; and

(3) limited mechanical and chemical plant and animal controls.

SEC. 9. PAYMENTS IN LIEU OF TAXES.

There is hereby authorized to be appropriated the sum of $1,500,000, which shall be paid by the Secretary of the Treasury in proportionate shares to the Osage County government and Pawhuska and Shidler school districts for their use in the furtherance of the public business of these governments as they determine. The proportionate share shall be determined by the projected loss of taxes to the county government and the school districts at the time of enactment, including the ad valorem taxes and the bond indebtedness of each school district. Upon receipt of such payment the rights of the Osage County government and the Pawhuska and Shidler school districts to any funds which may thereafter be due to such entities under the provisions of Public Law 94–565 shall terminate for such land as is acquired by the Federal Government under this Act.

SEC. 10. LIABILITY OF OIL AND GAS OPERATORS.

There is hereby authorized to be appropriated to the Secretary, to be administered by the Superintendent of the Osage Agency, Pawhuska, Oklahoma, such sums as necessary which shall be made available in grants to the operators of oil and gas production, storage, transportation, or processing facilities within the fee area of the Preserve and to operators of such facilities where they are located within 500 feet of a public road elsewhere within the Preserve. Such grants shall be made only upon application therefor, and only for the

construction of reasonable fencing or other barriers in furtherance of the Secretary's trust responsibility to protect and administer the Osage mineral estate in a manner that will not create liability claims inconsistent with the administration of the mineral estate for the benefit of the Osage Tribe.

SEC. 11. AGREEMENTS WITH OSAGE COUNTY.

(a) PARK AND COUNTY ROADS.—The Secretary shall enter into a cooperative agreement with Osage County pursuant to which—

(1) the Secretary may, with funds available to him for park roads, rebuild, reconstruct, and provide major maintenance with respect to county roads within the Preserve, regardless as to whether title thereto is in the United States; and

(2) the county may cooperate with the Secretary in the management and interpretation of the Preserve on road rights-of-way within and adjacent to the boundary of the Preserve.

(b) OTHER AGREEMENT.—The Secretary is authorized to enter into cooperative agreements with Osage County for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire protection.

SEC. 12. OSAGE MINERAL RIGHTS.

The Secretary shall not condemn or subordinate the mineral rights of the Osage Tribe. In matters relating to the mineral trust of the Osage Tribe, the Attorney General shall be responsible for proper representation of the interests of the Tribe.

SEC. 13. COOPERATIVE AGREEMENT WITH THE CITY OF PAWHUSKA.

The Secretary is authorized to negotiate and enter into a cooperative management agreement with the City of Pawhuska for the use of Blue Stream Lake as a recreational facility.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

Effective October 1, 1988, there are authorized to be appropriated such sums as necessary to carry out the provisions of this Act.

Statement by:
Henry Bellmon
Governor
State of Oklahoma

Mr. Chairman:

This statement is submitted in support of S. 1967, the bill introduced by Oklahoma's Senators Don Nickles and David Boren providing for the establishment of the Tallgrass Prairie National Preserve in the State of Oklahoma.

Let me first take this opportunity to commend the Oklahoma Delegation for the diligent work they have accomplished in drafting this legislation. The bill as introduced required many, many hours of work involving meetings with both local citizens in Osage County and with National Park Service officials.

Mr. Chairman, the Oklahoma Delegation has joined efforts and worked toward compromise legislation which will preserve one of the nation's unique ecosystems, boost area economic development and tourism and become a national classroom for better understanding our western and Indian heritage. These desirable goals can be accomplished by establishing and developing the Tallgrass Prairie National Preserve in Oklahoma.

Establishment of a tallgrass prairie unit has been under consideration since the 1930's. National Park Service studies conducted in the 1960's revealed that the Osage Hills, Oklahoma region provided the most desirable opportunity to establish a prairie unit with the least existing impacts. National Park Service technical assistance since 1984 has been directed toward

the Osage study area because of its recognized natural qualities large areas in few private ownership, statewide interest and landowners who are willing to have their land become a part of a national preserve.

As Governor, the National Park Service has provided me with briefing data in which boundaries for the preserve identified 115,000 acres in both fee and easement for the Tallgrass Prairie Preserve. Because of the opposition by the independent oil producers in the area and the Osage Indian Tribal Council, the National Park Service issued a study of alternatives in April, 1987 with three different boundary concepts. The Oklahoma Congressional Delegation and the National Park Service worked hand-in-hand to iron out boundaries, circulation routes, oil and gas operations, livestock grazing and the impact on the local governments which would have the least negative effect on those involved, yet preserving a sizeable tract of the unique prairie ecosystem which once dominated much of the west.

I believe it is significant to note that the number of oil and gas operations impacted is now less than 40 wells compared to a one-time high of 700 wells which were included with the proposed boundaries.

Mr. Chairman, as S. 1967 states, the purpose of the bill is to preserve for the inspiration, education, enjoyment, and benefit of present and future generations a unique and nationally significant example of tallgrass prairie in a manner that depicts for the visiting public the vast, sweeping and open scenes

characteristic of the tallgrass ecology; foster the study and application of management practices applicable to the restoration and preservation of indigenous tallgrass prairie species; interpret the history of the arrival of the Osage Indian Tribe to the tallgrass prairie area and its use by the Tribe continuously for more than 100 years and to interpret the production of oil and gas from the Osage Indian Reservation since the early 1900's; and to encourage an appreciation of our Western American heritage which was and continues to be intimately bound to the use of prairie grasslands for cattle grazing. I support these objectives.

It is important that land acquisition be allowed only on a "willing seller, willing buyer" basis. I believe at this point the language in S. 1967 needs to be less ambiguous on this point.

I also support the retention of their mineral estate by the Osage Tribe. As S. 1967 is drafted, the Secretary of Interior may not acquire any interest in the mineral estate within the boundary of the Preserve. As stated in the legislation, it is the express intent of Congress for the beneficial interest in such mineral estate as is held in trust on the date of enactment of this Act shall continue to be held in trust for the Osage Tribe.

Mr. Chairman, I commend the Subcommittee for holding hearings on S. 1967 and I urge prompt action by the full Senate Energy Committee to help make the Tallgrass Prairie Preserve a reality.

Senator BUMPERS. Senator Nickles.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Senator Bumpers, I want to thank you for having the hearing today and for your interest which you've expressed to me and to others. I would also like to thank Senator Boren for his cooperation and also Congressman Edwards and Congressman Inhofe, as well as the entire Oklahoma delegation and certainly the Oklahomans who are testifying today.

And Mr. Chairman, I would ask that my prepared statement, which is somewhat lengthy, be entered in the record as well. I would just make a couple of additional comments besides my prepared comments.

I think the tallgrass prairie preserve offers us an opportunity to Oklahoma and the entire country to preserve a little section of our country's history and heritage that I think can be a valuable asset to Osage County, the State of Oklahoma, and also a valuable national asset.

It is something that I have studied. I wrestled with this issue probably for several years. I will be frank enough to tell members in this group and others that I was initially reluctant to support the creation of the tallgrass prairie preserve. We created the task force chaired by Lee Holcombe who will present testimony today. The task force studied it thoroughly. I don't think they had preconceived notions that they would come out in support of the preserve, but they did. They became sold on the idea thinking it could be a real asset for county, state and the Nation as well. I concur with that assessment.

So, following their recommendations, we have worked with groups that are in favor of the preserve as well as groups that are in opposition to the preserve, trying to come up with a consensus bill. It's a bill, as you've mentioned, Mr. Chairman, that is not totally supported by all the groups. Some of the groups are opposed and remain opposed. Mr. Chairman, I will tell you as I will tell these groups, I remain totally committed to working with them to try and alleviate some of the very real and natural concerns that they have. Some of those concerns I also share. And I'll say that on behalf of my colleagues and others.

If we are going to have a preserve in the State of Oklahoma, we are interested in having a quality preserve, having a quality asset, having something that we can be proud of in Osage County, having something the State of Oklahoma can be proud of, and really, an asset that our Nation as a whole can be quite proud of. It is a lot easier said than done as the chairman is well aware of. You have sat through hours and hours of hearings on various land bills, many of which have been controversial as this one will be as well.

But again, I remain pledged to all Oklahomans and all interested participants in working as diligently as we can to come up with a proposal that will alleviate the real concerns that are raised. If we can't alleviate those concerns, we will endeavor to do so and again to create a quality asset for county, State and Nation.

Again, I thank you for the hearing and I do ask that my three-page statement be entered in the record as well.

Senator BUMPERS. Without objection.

[The prepared statement of Senator Nickles follows:]

U.S. SENATOR

Don Nickles

OKLAHOMA

STATEMENT ON S. 1967
A BILL TO CREATE A NATIONAL TALLGRASS PRAIRIE PRESERVE IN OKLAHOMA
U.S. SENATOR DON NICKLES
MAY 26, 1988

Mr. Chairman, I am very pleased to come before this hearing of the Subcommittee on Public Lands, National Parks and Forests today in support of S. 1967, a bill to create a National Tallgrass Prairie Preserve in Osage County, Oklahoma.

I am also pleased to welcome the Oklahomans and others who have joined us today to present testimony on the preserve. It is their input which allowed the members of the Oklahoma congressional delegation to draft the legislation which Senator Boren and I introduced last December in the Senate and which was simultaneously introduced by Congressman Edwards in the House of Representatives and cosponsored by the other five Oklahoma congressmen. And it is their input today which will underscore the merits of the bill as well as where there might be room for improvement. We have worked very hard to address all concerns brought to our attention and will continue to do so if any new ones arise today.

Mr. Chairman, I want to preface my remarks with a note that my involvement in this issue goes back in to the early 1980's when I was first made aware of a great deal of local interest --and concern-- with the tallgrass prairie preserve concept. I decided to pursue this concept if the majority of Oklahomans wanted a national preserve and believed it could benefit Osage County, Oklahoma, and the entire nation. And I do believe that, but I certainly don't want to discount the number of legitimate concerns we have addressed and will continue to address as we continue on this course.

In the Osage Hills, true tallgrass prairie exists in its pristine state. Untouched by the plow, one can see the acres carefully selected as those which best represent what settlers encountered as they journeyed West in the early days of our nation's history. A National Tallgrass Prairie Preserve would tell the stories of the Osage prairie in both historical and present terms. There is the story of the Osage Indian Tribe, their culture, their history and how they lived on the prairie. There is the story of the cowboys, the cattle drives and the building of ranching empires. There is the story of the settlers who crossed the prairie in search of a better life and the land runs that opened the West. And there is the story of the American oil industry, a boom and bust business that erupted in the Osage Hills in 1896, eleven years before Oklahoma attained statehood. And there is the prairie today, some untouched, some being grazed, but all of it quietly and all too quickly disappearing under the plow and pavement.

While forests, swamps, deserts and seashores have been preserved by law, little protection has been afforded to the vanishing tallgrass prairie. Most of the prairie lands which once stretched from Canada to Mexico have been transformed into our nation's breadbasket. The lands of native grasses which once supported huge herds of buffalo now function to provide our agriculture industry with the means to feed the world. It is estimated only two to three percent of our nation's original prairie lands remain untouched. And it is, I feel, largely for this reason there is such tremendous support for preserving this part of our national heritage.

Of course I have not even touched upon the tremendous economic benefit to the state resulting from the creation of this preserve. I'll let others tend to that, but it is certainly a point few Oklahomans supporting the preserve have missed.

In Oklahoma and here in Washington, much discussion and study has taken place regarding this important legislation. I have heard from thousands of Oklahomans who, at the rate of 15 to 1, want to see this preserve established. Additionally, petitions have been gathered from across the United States with the names of thousands more supporters. Actually, Mr. Chairman, support for this preserve goes back more than 50 years.

Since the 1930's, the National Park Service has considered adding a tallgrass prairie unit to its system of parks and preserves. Studies in the late 1950's indicated areas in Kansas and Oklahoma, including the Osage Hills, were the most representative tallgrass prairie regions. A multitude of proposals and studies surfaced in the 1960's and 1970's with National Park Service analysis pinpointing the three most desirable locations. Published in 1979, this NPS review again cited the Osage Hills area as the key area worthy of inclusion in the National Park System. National Park Service Director William Penn Mott, who toured the proposed Oklahoma site, noted its potential as "a jewel in the crown of the National Park Service" and has made the preserve's establishment a top priority.

In response to the tremendous interest in this issue, in 1984 I toured the potential site for the preserve, held a community meeting to get local input, and then decided to seriously pursue the issue by appointing a seven-member task force to study and report on a potential tallgrass prairie preserve in Oklahoma. The members of this task force represented every interested viewpoint of local citizens who would be affected by the creation of a national preserve. Although most of the task force members, as well as myself, initially had serious doubts about the feasibility of a preserve, seven months later the task force unanimously recommended to me that authorization legislation be introduced.

S. 1967 would authorize the National Park Service to acquire about 50,000 acres from willing sellers, and another 50,000 acres for easements. The mineral estate of the Osage Tribe and related oil and gas production would remain as presently administered. Livestock grazing would continue while animals once native to the area, such as buffalo, could be reintroduced.

This legislation is supported by all members of the Oklahoma congressional delegation, Oklahoma Governor Henry Bellmon, the Oklahoma state legislature, and the Pawhuska, Oklahoma City Council. I believe this project can succeed with a cooperative effort from all concerned. A National Tallgrass Prairie Preserve can not only be a national conservation treasure, but also a significant economic boost to Osage County and our entire state.

Mr. Chairman, today we have the opportunity to learn more about the Tallgrass Prairie Preserve and the benefits it will have for Oklahoma and the entire nation. The merits of this proposal are great, and I believe I am joined by a majority of Oklahomans who over the years have carefully weighed the advantages of this proposal. We have worked to alleviate the concerns of every interested group and develop a solid consensus. We all know the original prairie is vanishing, and while it is alive and well in Osage County, it won't be there forever. I am confident our work and perseverance in creating the preserve will enrich our lives and the lives of those who come after us by preserving an important piece of our nation's colorful history.

Senator BUMPERS. Our first witness this morning is our colleague, Senator Boren from Oklahoma. Senator Boren, welcome to the committee, and we're anxious to hear from you.

STATEMENT OF HON. DAVID L. BOREN, U.S. SENATOR FROM OKLAHOMA

Senator BOREN. Thank you, Mr. Chairman.

It has been said that America is a great nation because we have always cared more about the future of the next generation than we care about our own present. We have felt a responsibility to take a long view, to rise above short-term considerations, to pass on an enhanced heritage to the next generation. Today, we have an opportunity to be a part of preserving and passing on to the next generation a very special and beautiful part of our country, the tallgrass prairie.

Walt Whitman perhaps said it best when he wrote,

> While I know the standard claim is that Yosemite and the like afford the greatest natural shows, I am not sure but that the Prairies and the Plains last longer, fill the aesthetic sense fuller, precede all the rest, and make North America's characteristic landscape.

This magnificent prairie has a special place in America's history, as well as being absolutely beautiful. It was home to our original inhabitants, the Indian people. John Joseph Matthews who grew up in the Osage and others have written movingly about the beauty of the untouched prairie. I am fortunate to come from a state with a rich Indian heritage. I am proud that my own family shares in that heritage. Our Indian people have always had a unique sensitivity to nature and have been true stewards and trustees in preserving the beauty of the earth for succeeding generations.

The prairies were also special to the pioneers that came west. The beautiful rolling prairies with the tallgrass waving like a mighty ocean had a tremendous impact on the American spirit and sense of identity. It represents freedom and opportunity, an unlimited horizon.

The tallgrass prairie that all of us love and cherished has disappeared nearly everywhere. In the Osage country of Oklahoma, a unique set of circumstances has kept large areas intact. If we do not act soon, it will be soon lost, the victim to urban expansion covered with trailer houses and buildings and broken up into small lots. We must not let that happen.

America's young people in the future must have a place where they too can walk or ride in a covered wagon across the inspiring prairie that will convey to them the same sense of wonder that their ancestors experienced. It will help future generations better understand what our country is all about.

Before we can act, however, we must tackle and solve some very real problems. My own first initial reaction when this proposal was made to me several years ago, more than 10 years ago, was to be opposed to it. I didn't want to see land taken from people who didn't want to sell land. I didn't want the mineral interests of the Osage Nation endangered. There were many reasons for being against it. But the overriding concern of finding a way to preserve

this unique piece of land that is so much a part of the American spirit for the next generation made me come back again and talk to myself and say you must meet your responsibility to the next generations of Americans to try to do something to save this beautiful land.

But we must remember there are legitimate concerns—and I know we will hear some of them today—of local citizens in the area affected. There are legitimate concerns of the Osage Nation, of ranchers who need to have grazing rights, of oil and gas producers, of local units of government which cannot afford new financial burdens. And that is why we have created here a trust fund, an endowment fund, to pay in lieu local taxes to make sure that we don't put additional burdens on our schools and local units of government. Our focus today should be on sharing our best ideas about how to solve these problems, while meeting our responsibility to future generations. We may not have this chance again.

I have always conditioned my support for a tallgrass prairie preserve on four basic principles. First, the fee area of any preserve must preserve must be kept to a reasonable size and should be less than 50,000 acres. Second, the oil and gas production of the Osage Nation should be preserved and protected. Third, grazing of cattle should be allowed in the fee area of the preserve. And four, the National Park Service should not have the right to use condemnation to acquire land for the preserve.

As a result of my personal involvement with this legislation over the past several years, I recognize that there are additional concerns which must also be addressed. For example, how do we protect the rights of those who choose not to sell their land? How do we insure that the tax bases for local school districts, as I've mentioned, is not adversely affected. How can we limit the liability of oil and gas operators within the boundaries of the preserve? How can we protect the right of the Osage Nation to seek legal help from the Justice Department? How do we minimize the administrative burdens to be placed on local governments?

I believe that S. 1967 allows us to begin to answer these and other questions. The entire Oklahoma congressional delegation, five Democrats, myself, Congressman Synar, Congressman Watkins, Congressman English, Congressman McCurdy, and all three Republicans, Senator Nickles, Congressman Inhofe and Congressman Edwards, have worked together to sponsor this bill and the companion House bill which seeks to strike a fair balance of all concerns. It is important we recognize that today is really the beginning of our efforts. The testimony that will be presented to your subcommittee today, Mr. Chairman, will not only answer many questions, but I hope will raise and ask some new questions. Only through a frank and open discussion can we seek the common ground that will allow us to proceed toward preservation of this important national asset while protecting legitimate rights of those who are affected.

I would, therefore, like to publicly commend the chairman and the staff for their efforts to bring together this diverse group of witnesses whose insights and experience will no doubt prove invaluable. I have also filed a request, Mr. Chairman, that we have an additional field hearing in Oklahoma so that those who do not have

the financial means or the time to come to Washington will also be sure to have their views heard. It is very important that we hear from everyone affected and consider very carefully their concerns.

No one feels more strongly than I that legitimate concerns must be address. Where protection against possible abuses can be strengthened, we should do so. I will be the first to support improvements and changes in this bill when constructive suggestions are made. I am hopeful that this hearing will bring forth those kinds of constructive suggestions for improvement.

We must be sure that no special benefits are conferred on any individuals. Established procedures for appraisal of the value of the land must be followed. There must be provisions to assure that no one receives a windfall from the public treasury. We must be absolutely certain that the mineral interests of the Osage Nation is protected by ironclad provisions that cannot be violated or changed by the bureaucracy. I am proud to have been a part of protecting Osage mineral interests in the past as the principal of the author of the provision which saved the Osage Nation significant sums of money running into the millions of dollars by exempting their royalty payments from the windfall profits tax.

This legislation states specifically that the laws and regulations currently governing the production of oil and gas in Osage County will apply to all lands purchased by the Federal Government for the tallgrass prairie preserve. It is my personal intention that any other statutory authority previously given to the National Park Service to regulate the production of minerals should not apply to this project. The Federal Government has an obligation to the Osage Nation that it must honor. And I would certainly welcome any comments or advice that would strengthen the language of S. 1967 to protect the rights of the Osage.

Mr. Chairman, there is nothing in this bill that would force landowners to sell to the Federal Government. It is our intent that the National Park Service will in no way have the right to use condemnation or to force unwilling sellers off his or her land. There is language in the bill that would allow the Park Service to obtain clear and marketable title—that is, to quiet title—to any land that a willing seller has offered for sale. But let me reiterate, Mr. Chairman, my strong belief that if there is not a willing seller, then the Park Service should not have the right or the authority to procure that land. We need to make certain that no provision in this bill as it is now written could force people to give us their land voluntarily. If the bill is unclear in any way, it should be changed.

I am confident that your subcommittee will hear testimony today advocating a preserve significantly larger than that proposed in S. 1967. I have long stated my belief that in order to strike a fair balance between all the competing interests, the preserve should not be larger than 50,000 acres. With the proper use of easements, I feel the preserve can adequately represent the area's uniqueness. As one of our most biologically diverse ecosystems, the tallgrass prairie's living network of 300 bird and 80 mammal species once spanned 12 States. The Nation's best tallgrass remnant in a park quality setting lies in Osage County, and your subcommittee now has the opportunity to establish a world-class preserve that all Americans proudly cherish.

This legislation will establish an advisory commission, including a range management committee, that will work with the Park Service to establish a cattle grazing policy for the core area of the preserve. It is vitally important that grazing be allowed to continue in this area. Not only is cattle grazing historically significant in the county, it is a vital tool in the proper management of any tallgrass prairie. It is only through significant local input that we will benefit from the years of range management experience of the Oklahoma and Osage County Cattlemen's Associations.

Mr. Chairman, because we will all feel the impact of this preserve, the Oklahoma delegation has actively sought the input of all interested parties. We must not lose sight of the benefits of this project both in the short term and in the long term. An economic study by the Indian Nations Council of Governments indicates that in the short run there is a potential for an annual $9.5 million beneficial impact on the local economy of Osage County. In the long run, Mr. Chairman—and we are in a very hard-pressed economic situation in Oklahoma and in that part of Oklahoma—the beneficial financial impact will be far larger as the prairie preserve will serve as a magnet to draw people from all over the world and will give us a real opportunity to develop new ways of showing others our Indian heritage, the frontier experience and will draw them to already existing first-quality tourist assets in the region like Woolaroc, the Tsa-La-Gi Cultural Center, the Will Rogers Memorial, and Tulsa's great Gilcrease and Philbrook museums with their collections of Native American and Western art and artifacts. I am certain there will be those who will quibble with the numbers, but the fact remains that there is a positive economic impact of great magnitude on Osage County as a result of the creation of the tallgrass prairie preserve.

Again, Mr. Chairman, I would like to thank you for calling this hearing. I cannot adequately describe for my colleagues the imposing vastness of this tallgrass prairie. I have visited it many times. I stood on an escarpment where you can see literally for miles in every direction and see nothing but untouched, virgin tallgrass prairie. It is one of the most wonderful and exhilarating experiences that I have ever had in my life. Sometimes those of us that live close to something begin to take it for granted. We don't realize it is unique. We don't realize that people from other parts of the world would want to come to see it. We don't realize how a young person, for example, that grew up in the heart of a great city like New York or Chicago or Philadelphia would begin to understand what this country is all about, what our first inhabitants here really felt when they lived on that prairie in its vastness, what those across the frontier really felt. It's so important, Mr. Chairman, that we allow those young people, especially those who have never had an opportunity like that, to have a chance to come to a place and experience what the heart of America is all about. Suffice it to say that one must experience the beauty of these lands firsthand to truly appreciate them.

I look forward to working with this committee and all interested parties as we strive to fashion a proposal that will preserve for all this unique example of America's characteristic landscape while protecting—and I emphasize that—the rights of those who call the

tallgrass prairie home to remain as an integral part of its future. They preserved it so well—the people of the Osage Nation, the ranchers of Osage County, those that have come there to carefully extract the mineral resources which are a vital part of the economy of that region and must continue to be. We cannot stop exploration and development. We must not stop any production. They have all cared for it so well. I am very proud as an Oklahoman for the way in which the people of this area themselves, all parts of the community, have cared for this preserve. They truly love it. We must find a way to preserve it for all the country and to do so in a way that takes full note of their own concerns because, after all, we wouldn't have it today if they hadn't cared enough about preserving it up to this point.

So, I thank you, Mr. Chairman, and look forward to hearing the witnesses and hope that we will come from the meeting today with many constructive suggestions for meeting these two goals: preserving the prairie for the future, doing something very important economically and aesthetically for my state and for our country, and also protecting and looking after the vital interests, the continued income flow for the Osage Nation and others. And I hope we can accomplish that, and we'll all try to work together to do it.

Senator BUMPERS. Thank you very much, Senator Boren.

I thought this was a good bill, but since all your delegation agree on it, it makes it suspect with me. Anytime you get all the members of a delegation——

[Applause.]

Senator BUMPERS. Please that was intended to be funny. [Laughter.]

Senator BOREN. Mr. Chairman, having had some discussions with you yesterday on another matter of where we put some airplanes, it is certainly a pleasure to be with you today and discuss a different subject. [Laughter.]

Senator BUMPERS. Well, Since Ronald Reagan cannot be with us today, let me ask you. Did you ever see the movie "Sea of Grass" with Spencer Tracy?

Senator BOREN. I have to admit that I haven't.

Senator BUMPERS. No. You're too young to remember that. [Laughter.]

Senator BUMPERS. It was a magnificent movie and I can still see Spencer Tracy driving that carriage across that magnificent prairie with that grass blowing. It was probably a wheat field, but it made an indelible impression on me.

And I might also point out, Senator Boren, the State of Arkansas' heritage commission is buying all the virgin prairie land they can lay their hands on in an arm's length transaction. And frankly, if they can get a big enough tract put together, they hope to reintroduce the prairie chicken in Arkansas.

Let me just ask you three or four questions. Do you know whether or not there is any coal under this land or any other hard rock minerals?

Senator BOREN. I do not know if there are hard rock minerals there. Of course, there are very significant oil and gas, principally oil, in this area. We have I think approximately 600 producing wells in the area that we originally looked to. And by the way, one

of the things that congressional delegation, all eight of us, worked on for almost two years is to try to change the boundaries as much as possible and we have succeeded in getting more than 90 percent of all those wells outside the boundaries of the fee area now.

But, Mr. Chairman, what we want to make clear is—and I understand. As I say, I've worked with the Osage Nation in the past authoring the bill to exempt their minerals royalty payments from the windfall tax. This is absolutely a crucial source of revenue for the Indian nation, for the Osage Nation. And we have to be careful. We know that in other areas—and I know the Park Service has some misgivings about this. They have their own regulations they operate under for mineral extraction, be it hard rock or oil and gas. We are very—I have to just be honest with you—suspicious about those regulations. And I think the Osages have every right to be suspicious of the government anyway in the way they have been dealt with in the past, the history of the Federal relationship with the Nation is not a proud one. Therefore, that is the reason we wanted to write into the law, not leave it at discretion with the bureaucracy. We wanted to write into the law that the current provisions under which we are operating through the Bureau of Indian Affairs and others would continue to be the policy not only in production but on future exploration as well because we don't want to just be able to produce these wells but to make sure that we still have the right to explore and find additional mineral production in the future. And I will look at the hard rock situation as well.

Senator BUMPERS. Senator Boren, that would cause a problem I think for this committee because I would be reluctant to vote for a bill that did not provide that the Park Service would not purchase lands that had known hard rock minerals or coal under it that really could be economically produced because that would defeat the whole purpose of purchasing the land.

Senator BOREN. Well, I don't know that that——

Senator BUMPERS. That may not be a problem here.

Senator BOREN. I don't think that's a problem here.

Senator BUMPERS. But we need to find out.

Senator BOREN. I don't think that's a problem. And, of course, the oil and gas extraction, as you know, is being accomplished now in a manner that does not damage the aesthetics of the area.

Senator BUMPERS. You can extract oil and gas without doing—you do some damage.

Senator BOREN. If you had strip mining, that's a different situation.

Senator BUMPERS. Absolutely, and that's precisely what I'm alluding to.

Senator Boren, has the Park Service or anybody else done any studies as to how much of this land might be available in an arm's length purchase transaction?

Senator BOREN. I understand, Mr. Chairman, that most of it would be. Now, economic circumstances will change. Frankly, the market value of this land today is very, very much lower than it was even 3 or 4 years ago. Generally, agricultural kinds of land in Oklahoma have deflated—we have been going through a virtual depression—as much as 50 percent over the last 3 or 4 years.

Senator BUMPERS. How much of this land is virgin prairie? Is all of the 50,000 acres virgin? Has it ever been plowed? Is it under cultivation?

Senator BOREN. Virtually all of it is.

Senator BUMPERS. All virgin prairie?

Senator BOREN. Virtually all of it is. Now, it has been grazed, of course.

Senator BUMPERS. What kind of topography is it? Is it hill country or gently rolling country?

Senator BOREN. It is gently rolling so that you have just magnificent vistas. As I say, there is one spot on a particular escarpment where you can look up into Kansas. I don't know if we can see Arkansas. We would always like to be able to see Arkansas. [Laughter.]

Senator BUMPERS. We're pretty particular about who watches us. [Laughter.]

Senator BOREN. But it is rolling country. It has some trees down in the ravines in the indented areas. The grass at certain times of the year—and I hesitate to speak on this because there are those in the audience who have actually written books on the grass systems of the prairie. But it is not at all unusual to see it way above your chest if you were trying to walk through at certain times of the year.

Senator BUMPERS. Are there any studies as to the potential cost of the easements and the fee simple title?

Senator BOREN. I have seen a ball park estimate. The estimate I think is roughly $50 million in total.

Senator BUMPERS. Staff tells me that the Park Service——

Senator BOREN. Including the development costs, the land acquisition and the easement acquisition. That would be the total cost. The fee area would be smaller than that, I think 23. And, of course, that is based upon——

Senator BUMPERS. The Park Service says $24.6 million I see here.

Senator BOREN. That's certainly the ball park. Of course, we would not know exactly until we had the final appraisals through the right process, and it would have to be an arm's length transaction. That is one of the things we want to be very careful about, Mr. Chairman, because these have been large units. We want to make certain that no one is overpaid.

Senator BUMPERS. What kind of improvements are there in this area? Homes and so on?

Senator BOREN. There are a few ranch homes. There are a few outbuildings. There is one historic compound of stables and barns and outbuildings that go back to the very early frontier days.

Senator BUMPERS. Does your bill make any provision for preservation of anything of historical value in this area?

Senator BOREN. Yes, it does. And there are one or two areas in particular where there are some very historic sites that were used by very early cowboys, for example, that have a long history that we would hope we would be able to preserve. But the great thing about this is—and the reason I say this opportunity may never come again—it is unique in Oklahoma as an area that still has a number of very large ranches. All of the minerals—

Senator BUMPERS. It's all cattle country?

Senator BOREN. It's cattle country.

All of the minerals are owned by the Osage Nation by right. The number of landowners for this amount of surface is very small. So, you have very large units. Now, as Tulsa expands more and more, you have urban development creeping in to Osage County and you have the five acre ranchettes with the trailer house and these kinds of developments.

What concerns me is that given the economics of ranching and as land values begin to go back up again, number one, we won't be able to afford to acquire the land in the future. It is much lower in terms of its market value than it has been for years. And certainly the only way for it to go is up in the future. So, the cost would be much greater in the future. And also, I'm just afraid that the economics of the ranching situation will be that many of these larger ranches in the future will simply have to be sold off and parceled out to pay inheritance taxes as they go on to the next generation and just because of the economics. We have had very, very desperately hard times.

Senator BUMPERS. Is Pawhuska the country seat of Osage County?

Senator BOREN. Pawhuska is the county seat.

Senator BUMPERS. I have been through that country two or three times, but it has been many years.

Senator BOREN. Pawhuska is also one of the most interesting towns in our state. It has a tremendous amount of historic architecture, turn of the century architecture. Again, I can just see that if this is developed—we have Wooloroc nearby already which is a great center developed by the late Mr. Philips, one of the greatest collections of Native American artifacts and history in the country. I visited it recently again, and I am just always amazed at it.

But I think we have a great opportunity here for the Osage Nation in the future to participate in the economic development of the region and to be tied in with the development of the preserve in a way that not only can they use it as a method of further educating the people of the country about own heritage and our Osage heritage, but it also should provide, with the tourist infrastructure that will come, some very good economic opportunities for the Osage Nation and for the region. And it badly needs some infusion of outside capital right now to help in its economic recovery.

Senator BUMPERS. Thank you.

Senator Nickles, do you have any questions?

Senator NICKLES. No.

Senator BUMPERS. Senator Boren, let me invite you as a colleague to join the committee during this hearing. We would be delighted for you to come up and sit with us.

Senator BOREN. Thank you very much, Mr. Chairman.

Senator BUMPERS. Our next witness is the Honorable Mickey Edwards, Congressman from Oklahoma.

STATEMENT OF HON. MICKEY EDWARDS, U.S. REPRESENTATIVE FROM OKLAHOMA

Mr. EDWARDS. Senator, good to see you.

Senator BUMPERS. Mickey, good to see you, and please proceed with your testimony.

Mr. EDWARDS. First let me say that Jim Inhofe, who joined me in introducing this legislation in the House, had to leave because we are having a vote over there. And so, I don't know whether he is submitting a statement for the record or not, but that is why he is not able to be here.

Senator BUMPERS. If he would like to, please advise him we would be delighted to insert his statement in the record.

Senator BOREN. We might also have the record open for our other House colleagues who have joined in the legislation to submit statements.

Senator BUMPERS. Fine.

Mr. EDWARDS. Well, Senator, thank you very much for the opportunity to be here today to discuss the establishment of a tallgrass prairie preserve in Oklahoma. We have tried for many years to draft a plan that would protect one of America's last remaining sections of the Great Plains, part of the vast prairie land that our ancestors first saw as they moved west. And we have tried to do so in a way that would allow current uses of this land to continue without obstruction.

That has meant bringing together a variety of people. It has meant, to the greatest extent possible, accommodating the concerns of the Osage Indians, oilmen, cattlemen, local school boards, landowners and others. Last December, after a great deal of work, Senator Boren, Senator Nickles, Congressman Inhofe and myself proposed a preserve which we believe can work. And we introduced that with the support of the entire Oklahoma congressional delegation. In January you may have seen an article on the front page of the Washington Post which described not only the preserve, but the compromise which enabled us to put the bill together. The article described the compromise as reed thin, and made it clear that it was this compromise and the ability to hold it together upon which the future of the preserve depends. The need to maintain a balance between environmental protection and protecting the livelihood of those people who depend on the land is what made creation of this preserve unique. And I believe we can accomplish that.

Establishment of the preserve would be a very valuable contribution tour Nation's heritage. When I was first approached by members of the Audubon Society several years ago, my initial reaction was that it was a good idea. I had been a member of the Interior Committee in the House when it considered previous proposals to locate a tallgrass prairie in Kansas. And I remembered the divisions locally which finally made it impossible to go ahead with that project. And I have always felt that the preserve could be established in Oklahoma, that it would benefit the state and the Nation tremendously, but that it would have to be done by bringing the various groups together.

My constituents have had a lot to say about the tallgrass prairie. There are strong feelings on both sides of the issue, including the very real and very legitimate concerns of the Osages, the local school districts, the Oklahoma Independent Petroleum Association and many of the local citizens. And I have said that I could not

support the project until there was a clear consensus which either supported the preserve or was at least willing to live with it.

When we introduced this bill in the House—it was H.R. 3803—at the end of last year, I believe we had reached that point. By definition, the proposal we came up with gives the preserve's advocates less than they want, provides for far more than the preserve's opponents want. The cost is less. The size is smaller. The restrictions are fewer. But the end result is that unlike Kansas, Oklahoma can provide a site where a preserve can be created.

I think we learned something else in the process. Not only did the four of us, Senator Boren, Senator Nickles, Congressman Inhofe and myself, work closely to hammer out all the details until all of us were in agreement on every point, but we also found that if we were patient and took into account all of the legitimate concerns of our constituents, we can move forward without losing the ability to protect the national interest in the western prairies.

We have always emphasized how we need to retain the four pillars in our plan: a limit on total acreage, no condemnation, unimpeded oil and gas operations within and around the preserve boundaries, and the ability of ranchers to graze livestock. This remains the best way to balance both conservation interests and the needs and rights of the citizens of Oklahoma and the United States.

The size of the proposed preserve, roughly 50,000 acres, is large enough to recreate true prairie conditions and to protect the core areas from undue development or degradation. Many outstanding natural and recreational areas, including rugged canyons, hiking and hunting areas, ecologically valuable back country, and much of the area's riparian habitat would be included in the preserve.

But Osage County presents a very special circumstance where the desire to establish a preserve must be balanced with the need to guarantee the Osage Tribe's complete rights to its subsurface minerals. Oil and gas production remains quite active in areas immediately adjacent to the preserve. In our view our bill satisfies this unique situation by allowing existing BIA regulations to continue to apply to oil and gas operations. Such an arrangement would allow for responsible management of the preserve without inflicting costly new burdens upon those exercising legitimate mineral rights.

Because not all of the areas landholders are willing sellers, special consideration was given in the proposal to restrict condemnation for any reason other than clearing title. And finally, we proposed the establishment of an advisory committee to advise the Park Service on managing the area to help provide for orderly grazing of existing livestock. Such a committee would provide very important input into decisions on how to preserve, restore and maintain the prairie's ecosystem.

The tallgrass prairie is a cousin to the great forest, the deserts, the seasides, the mountains of America. Those who know the prairie well have described it as a "mysterious place with the power to both stir and quiet the soul."

Scientists say that the tallgrass with its 300 bird and 80 mammal species is one of the most biologically diverse ecosystems on the continent. And it is all but gone. Only 3 percent of the original

400,000 square miles of tallgrass remains. We have an historic opportunity in Oklahoma to capture a portion of this beautiful and important reminder of our Nation's past. With continued effort I believe the preserve can, indeed, become a reality.

But finally, Senator, I would want to add this point. I want to emphasize that my support for this proposal—and I truly do want to see this preserve created—which I have introduced in the House for myself and the entire Oklahoma congressional delegation, is predicated on remaining true to the agreements we have reached which limit the size of the preserve, limit its cost and protect the interests of the Osage Tribe, the interests of Oklahoma's oil and gas producers, the local school districts and the local ranchers. If we can live with those restraints and prove our ability to compromise for the common interest, we can preserve for the future an important part of our national environment. If we cannot live with those restraints, then this precious heritage will surely be lost.

I thank you for the opportunity to testify.

Senator BUMPERS. Thank you very much, Congressman. It was an excellent statement.

Senator Nickles?

Senator NICKLES. Mr. Chairman, I just wanted to compliment Congressman Edwards and also Senator Boren for their work. This truly has been a bipartisan, mutual effort with the entire Oklahoma delegation. I particularly compliment Congressman Edwards and his staff for their outstanding work. This bill has also benefited immensely from extensive personal member of staff involvement. So, I compliment both Senator Boren, Congressman Edwards and Congressman Inhofe as well for their input on this legislation.

Senator BUMPERS. Senator Boren, did you have any questions of the Congressman?

Senator BOREN. No. Again, I just want to thank him for all of his help on it and all of our colleagues on the House side and to underline again what Congressman Edwards has just said. We have tried to work out a very delicate compromise that gives the kind of absolute protection to the mineral owners, to the Osage Nation and others that are extremely important, and the producers as well. And it is a very delicate consensus, and I think it would be the feeling of the entire delegation that it would withdraw its support if any of these protections were in any way weakened for the local people. And I think that has to be underlined and that has been the position of all of us from the beginning. And Congressman Edwards has expressed that very strongly at every step of the process.

Mr. EDWARDS. I thank you for saying that, Senator. I think we have a unique opportunity, as I have said, to create a preserve that would be very beneficial here. And one of my concerns, and I know the concern of other members of the delegation, is that after we have reached the compromise, there are people who are advocates of the preserve who are having a hard time resisting the opportunity to try to say let's make it bigger and bigger and more and more expensive. And I hope they are reading into what we are all saying in the delegation that we have a chance to go forward with something good, and if they get too greedy, there will be nothing.

Thank you very much.

Senator BUMPERS. Thank you, Congressman.

Our next witness is the Director of the National Park Service, William Penn Mott. Welcome, Director Mott. Bill, if you would like to summarize, be my guest. Or if you want to read the full statement, that's fine too.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. MOTT. Thank you, Mr. Chairman. I appreciate the opportunity to provide your subcommittee with the views of the Department of the Interior on this legislation.

We strongly support the concept of establishing a Tallgrass Prairie Preserve as envisioned in S. 1967. In several respects, this bill is a model of how to design a new park area in harmony with the principles of this administration. Given the deficit crisis and the existing backlog of National Park Service land acquisitions, however, we urge and recommend that funds not be authorized to acquire land.

The establishment of a Tallgrass Prairie Preserve represents a long-sought goal of the National Park Service. With the addition of such a preserve, we believe the National Park System will be essentially complete as to natural areas, and this gap in preserving the natural values of this country will have been satisfied.

Although the great North American prairie is part of America's heritage, today only remnants of this once vast grassland remain. One such remnant is the Osage Hills area included in this bill. Establishment of a tallgrass prairie unit was first proposed many years ago.

In 1915 Dr. V. E. Shelford of the University of Illinois began researching animal behavior on the prairies. In 1930, Dr. Shelford formally suggested a prairie area to the National Park Service. The idea was supported by the Ecological Society of America.

Between 1937 and 1953, the Park Service studied grasslands in Kansas, Nebraska, Colorado, the Dakotas, and Montana. In 1956 the Secretary of the Interior's National Park Advisory Board recommended further study to determine tallgrass areas for inclusion in the National Park System.

A 1960 report surveyed 24 grassland sites and eliminated 18. Further studies were done on the remaining sites and it became clear that the highest quality areas were in the Flint Hills of Kansas and Oklahoma.

In 1961 the National Park Service recommended a 57,000 acre preserve in Kansas, but the proposal had no public support. In 1975 studies continued, and in 1979 a partial environmental assessment of three sites was submitted to the Congress. In the assessment, the Osage site was recommended for further study as the least impacted site.

In 1984 and 1985 the Barnard Ranch in the Osage Hills became available for sale. National conservation groups proposed a National Park Service unit to include this ranch and other properties in the Osage Hills northwest of Pawhuska, OK.

In 1985 Senator Nickles established a citizens task force to study the feasibility of a preserve and advise him on the possibilities. The National Park Service assisted the task force. In the spring of 1986

the task force reported to Senator Nickles that there was strong local support for a Tallgrass Prairie National Preserve. Based on further review by the delegation, boundaries were developed and incorporated into the legislative proposal which is now embodied in S. 1967.

The proposed Tallgrass Prairie National Preserve legislation would: include approximately 100,000 acres of surface estate divided evenly between fee and easement; authorize acquisition of surface estate only and only with the owner's consent; prohibit acquisition of mineral estate; authorize grazing permits in accordance with a range management plan; authorize hunting and fishing in accordance with State law and a plan developed in cooperation with the State and advisory committee; provide for a research facility in prairie management; and establish a 17-member advisory committee and a 9-member range management committee. Other provisions authorize payments to Osage County and school districts, grants to oil operators for fencing, reconstruction and maintenance of county roads, and cooperative agreements with the county and city of Pawhuska.

The proposed preserve is an outstanding example of the few remaining unaltered segments of tallgrass prairie which once covered 400,000 square miles of America. Bird and mammal life are exceptional. Many raptors, including golden and bald eagles, winter in the area. Prairie chicken and turkeys are permanent residents. An estimated 50 mammal species inhabit the area. White-tailed deer are common.

The rolling hills topography allows an unbroken view of grassland and cross-timber oak stands. In summer the bluestem grasses may reach a height of eight feet.

The area includes portions of five large ranches whose families have historically practiced good husbandry, and cattle grazing still continues. We are fortunate that the current owners have taken such pride in the land.

Under this bill, existing property rights and uses are recognized and the resources would be protected. There are approximately 36 producing oil wells and 8 gas wells within the surface fee acquisition area. Minerals are owned by the Osage Tribe and leased to various operators. Under the legislation, the National Park Service would not have any additional regulatory authority over oil and gas activities. This would continue to be the subject of BIA regulations. We strongly support the continuation of BIA regulations, CFR 25. In addition, the United States has a trust responsibility for nearly 12,000 acres in that area which are owned by Osage Indians subject to a restriction by the United States against alienation.

We would, however, have the same rights as the current surface owners. These include the right to arrange access routes across the surface with the operators and the Osage Indian Agency.

Mr. Chairman, the oil and gas activity is not overly intrusive in this landscape. It consists primarily of capped wells and a few pumpjacks. Furthermore, we have experience since 1974 in working with oil and gas activities in the Big Thicket and Big Cypress National Preserves.

Although the Osage Tribe has expressed concern, we believe the National Park Service, the Osage, the visitors and the oil operators

can exist side by side here without difficulty. I can say to you, Mr. Chairman, that the National Park Service recognizes this and we believe very strongly that we can work with these people in a very harmonious way without any interference to their rights in connection with oil and gas operations. We wholeheartedly support the concept and pledge that Osage mineral rights will not be diminished. By so doing, the Secretary will uphold the Department's trust responsibilities to the tribe.

As I noted, the bill authorizes grazing permits in accordance with a range management plan that would be subject to approval of local and State experts on ranching. We envision that such a plan will identify where and when cattle grazing permits will be offered and the fees for such permits. We expect that within the fee areas only a portion will be offered for grazing and the remainder would be used for research purposes.

We estimate the cost of acquiring the interests in the surface estate to be $24.6 million. This includes acquisition of parts of the six ranch complexes, whose owners are given the right to remain for 25 years or life. The bill authorizes acquisition of the property by donation, exchange or purchase with appropriated funds.

We strongly urge and recommend that funds not be authorized for purchase with Federal appropriations. Because of the existing deficit situation and the land acquisition backlog of the National Park Service, we believe it is unfair to hold out an expectation to landowners that their property will be acquired expeditiously through the use of Federal dollars. Consequently, we believe that the Tallgrass Prairie Preserve envisioned by this bill would become a reality much sooner if land acquisition were accomplished through State, local and private sector initiatives rather than through the use of Federal dollars.

Therefore, we urge that land acquisition for tallgrass prairie not be placed in competition for scarce Federal funds with other parks and other landowners, who have been awaiting purchase for decades. For example, we still have authorizations for acquisition of lands at Voyageurs National Park in Minnesota which was authorized in 1971 and at Cuyahoga Valley National Recreation Area in Ohio which was authorized in 1974.

Any estimates of additional costs are difficult to make with precision until a general management plan is completed as required by existing general law and by section 6 of this bill. However, we can provide you with estimates based on assumptions in the bill and operational costs for other areas.

Annual operating and management costs are estimated to range from $290,000 after initial establishment to $1.4 million in the 10th year when development is complete. I might add that insofar as the initial operating costs are concerned, it will depend entirely on how the ranch areas are used during the 25-or-life period of tenancy for these pieces of property, and the initial cost could be considerably less than $290,000 if some of the existing buildings can be used for maintenance and administrative use. We would expect to charge fees for grazing and the use of recreational facilities to help pay for operation and maintenance costs.

Full development of facilities in 10 years is estimated to cost $15.2 million. Development and construction of roads, trails and in-

terpretive and administrative facilities are going to have to be funded with substantial help from non-Federal sources such as the State, county and private interests. This is especially true with respect to the research facilities required by section 5 and any assistance rendered to the Osage Tribe to establish a museum.

The total cost of road improvements, which we would expect the State and county to share inasmuch as road use by local residents will continue, could reach a cost of $9.5 million.

Secretary Hodel and I have made it clear to the sponsors of this legislation that in the current fiscal climate we need and welcome their support to minimize the cost of this new area.

Mr. Chairman, without significant contributions from the State, local and private sources, we will be unable to complete land acquisition and facility development in the foreseeable future because of the scarcity of Federal dollars for this purpose.

Mr. Chairman, we further recommend that consideration be given to four points that cause us concern with respect to management of the area.

One, boundaries. The bill does not permit condemnation. Yet, the boundaries do not follow ownership lines. If owners are unwilling to divide their property as depicted in this bill, they need not sell. The executive branch needs flexibility in working with the owners to dispose of lands acquired outside the boundaries. The bill limits our authority in this regard only to uneconomic remnants.

Two, easement costs. Section 2(d) prohibits spending more than 60 percent of the fee value for easements. This is unrealistic, since the value of easements along the highways may well be higher. As a point of comparison, easements acquired for Buffalo National River in Arkansas have been averaging 70 to 72 percent of fee value. We recommend committee report language be substituted.

Three, range management committee. Section 8 requires the concurrence of the range management committee in the Secretary's grazing plan. We defer to the Justice Department on whether this provision may raise constitutional concerns, but in any case we recommend consultation instead of concurrence.

Four, inholders. Section 8(b)(5) requires that compensation be paid to inholders who may suffer a loss in grazing fees due to the Secretary issuing grazing permits on Federal land. We see no reason for such a provision. Section 2(f) requires that inholders be provided reasonably and unimpeded access to their property across Federal lands. We recommend that language be adopted to assure that the Secretary has the authority to designate all such access routes.

In addition, the Bureau of Indian Affairs has suggested several technical amendments to the bill. These are attached to our statement and we will not try to go through those at this time.

In conclusion, we have for many years realized that the National Park System in the United States will not be complete without a remnant of the once vast tallgrass ecosystem. For this to occur, however, several things have to come about: non-Federal financing support, willing sellers, sensitivity to existing users and above all, a high quality resource. These elements are all possible here in this bill and we strongly support it.

That concludes my testimony and I'll answer any questions that you might have.

[The attachment to the prepared statement of Mr. Mott follows:]

BIA AMENDMENTS TO S. 1967

In section 1(b) on page 2, line 22, before the period insert a comma and "Washington, D.C.".

In section 2(a)(3) on page 4, line 4, delete "Nothing" and insert in lieu thereof "Except as provided in section 12, nothing".

In section 3(a) on page 7, line 21, delete "The" and insert in lieu thereof "Except as provided in section 4, the".

In section 4:

On page 9, lines 10 and 11, delete "by the Act of March 2, 1929 (45 Stat. 1478)".

On page 9, line 12 after "gas" insert a comma and "coal, and other minerals, and water".

On page 9, line 17 after "1906" insert a comma and "as amended and supplemented".

On page 9, lines 21 and 22, and line 23, in both instances delete "oil and gas" and insert in lieu thereof "oil, gas, coal, and other mineral and water".

In section 10 on page 16, line 22, delete "oil and gas" and insert in lieu thereof "oil, gas, coal, and other mineral".

Senator BUMPERS. Thank you very much.

First of all, you have stated the administration's position on this. Why don't you give us your opinion on it now.

Mr. MOTT. My personal opinion is this has the highest priority in the National Park Service for acquisition.

Senator BUMPERS. I appreciate that very much. In other words, you think it's a dynamite idea.

Mr. MOTT. Absolutely.

Senator BUMPERS. Now, you know the other day we had Secretary Hodel, your big boss, up here. And he was boasting about the fact that we had added 29 parks in the last 7½ years. And we got to checking, and we found that every one of them except one had been by congressional initiative. The administration hadn't recommended any of them.

I feel that if we take the administration line on this, there will never be a preserve of the tallgrass prairie. They've got 132 stealth bombers. If we could just talk them out of just the tail section of one, it would be more than enough to buy this property. And if we could talk them out of one whole big old stealth bomber, and just build 131 instead of 132, we could buy this and 17 more just like it. And it is hard for me to believe that the Russians are going to come and get us if we just build 131 instead of 132. But I can say that if we take the administration's view on this, we may wind up with a preserve and we may not.

Is the Barnard Ranch still for sale?

Mr. MOTT. Yes, I understand it is.

Senator BUMPERS. Do you know what they are asking for it?

Mr. MOTT. No, I do not.

Senator BUMPERS. That's 29,000 acres. Is that right?

Mr. MOTT. I think so, yes.

Senator BUMPERS. Is that all within this boundary area? I understand that that is that green area on the right there.

Mr. MOTT. That's about half of the ranch.

Senator BUMPERS. How big is the ranch?

Mr. MOTT. Approximately 30,000 acres.

Senator BUMPERS. About 30,000? Are you telling me that only half of it is within the core area?

Mr. MOTT. Core area.

Senator BUMPERS. I see.

But you don't know what they're asking for it?

Mr. MOTT. No, I do not.

Senator BUMPERS. Has the Nature Conservancy involved themselves in any of this?

Mr. MOTT. They have been interested in this project for some time.

Senator BUMPERS. Have they bought any of the land or taken options on any of it?

Mr. MOTT. They took options, and I'm not sure whether those options are still in force.

Senator BUMPERS. As I understand, the principal opposition to this bill, of course, comes from the Osage Indians. And I understand their apprehensions and concerns. And I assume that you do too. You understand their concerns particularly about their mineral interests and their royalty rights and so on.

Mr. MOTT. Absolutely.

Senator BUMPERS. Do you think the bill sufficiently protects the Indians?

Mr. MOTT. I think so, yes. We have pledged our strong support for the BIA regulations being continued, and we think that we can work very well with the Indian community to see to it that their rights are protected and that they have every opportunity to continue exploration for gas and oil or any other minerals that they have rights to.

Senator BUMPERS. Bill, how much money do you have in your budget this year for acquisition?

Mr. MOTT. My recollection of the amount of money that is in the budget for acquisition is something like $19 million.

Senator BUMPERS. I assume that has all been committed.

Mr. MOTT. That has all been committed, yes.

Senator BUMPERS. How much did you ask for next year? The same thing you did last year? Zip?

Mr. MOTT. In order to keep within the budget that we have been provided, the amount of money for acquisition is virtually not there.

Senator BUMPERS. Incidentally, on a totally unrelated thing, did you see the big press release the other day about the condition of our parks?

Mr. MOTT. Yes, I did.

Senator BUMPERS. Did you read it?

Mr. MOTT. I've read the report, yes.

Senator BUMPERS. What's your view on it?

Mr. MOTT. What is my view?

Senator BUMPERS. Of the report.

Mr. MOTT. I think that they have indicated some of the problems that we have. On the other hand, Mr. Chairman, I can say to you I have visited 300 of our 343 units, and they are all safe, and that the maintenance in all of the units is in good condition. We always will need money for maintenance. We need money to keep them in good condition. But I think that because of the dedication of our staff and the way that they have handled these matters people who go to the parks will find them in good condition.

Senator BUMPERS. Well, I'm thinking very seriously about visiting all those parks. I think there were 10 listed in that report that were under severe stress. And I'm thinking about going out to check that out. I can't sit here as chairman of this committee with jurisdiction over all the national parks and read things like that and just assume that it's all erroneous.

Mr. MOTT. Well, I'm not saying that. I just came back from the Florida Everglades, and we do have a problem there of pesticides and chemicals in the water from the agricultural activities there that are a serious threat to the ecology and the environment of the Florida Everglades National Park. We are working with the agricultural interests in connection with this to let them understand the problem. We have some research going on and we know exactly what the problem is.

Most of these threats to the National Park System come from the outside. It is a difficult problem and a challenging one, we are tackling those problems. We know the problems, we know what

can be done, and we have a very active research program so that we can provide the proper information in order to resolve some of these problems. I would welcome you to visit these areas.

Senator BUMPERS. I hope that when I can do that, I can do that without anybody even knowing it. I know, you know, Senators always get this VIP treatment and when you leave, you're not a hell of a lot smarter than you were when you went. And I'd like to do this just privately and without any prior notice because I know how that always goes.

One time when I was on the Armed Services Committee, I went down to Norfolk and I went on board this submarine. And I must say it was a most impressive trip. And after I got back, I got a letter from a sailor saying that they had refused to let them have breakfast that morning so the mess hall would be in spotless condition for my visit.

Mr. MOTT. Well, Mr. Chairman, with your reputation, I'm not sure that you can visit any national park and not be known.

Senator BUMPERS. Oh, I'm not that well known, Bill.

Mr. MOTT. But I'll tell you this, that our people will speak frankly to you and show anything that you want to see.

Senator BUMPERS. Well, I believe that, and I have the greatest respect for your people. They are all dedicated. I've never run into anybody in the Park Service that I didn't think was really dedicated.

Mr. MOTT. That's absolutely true.

Senator BUMPERS. I think this administration has always been the problem of the Park Service.

You know, I not only voted for your approval. I think you have done an outstanding job within the limits that have been defined for you. And I have the utmost respect for you, Bill.

Mr. MOTT. Thank you, Mr. Chairman.

Senator BUMPERS. Senator Nickles?

Senator NICKLES. Mr. Chairman, thank you for your comments.

Director Mott, thank you very much. I want to compliment you as well for your statement and also for the excellent support that you and your staff have given us on this issue over the last several years. You have personally visited the tallgrass prairie. Isn't that correct?

Mr. MOTT. That is correct.

Senator NICKLES. Was that a couple of years ago?

Mr. MOTT. Yes.

Senator NICKLES. We have wrestled with this for some time.

I was going to ask you a question about your commitment to insure the continued production of oil and gas activity in the area and you made it very strong.

Mr. MOTT. Absolutely.

Senator NICKLES. Some people would suggest that your successor will not be as benevolent as you. We understand that statements that you, Senator Boren, Congressman Edwards, myself and others have made. But, what about 10 years down the line? This is vitally important to the economic well-being of the Osage Tribe as well as oil and gas producers, the county, the State of Oklahoma, et cetera. What about 10 or 20 years down the line? With this assurance that we're giving statutorily as well as verbally, how can we make those

people who have some reservations about governmental statements feel rest assured that gas and oil production will continue on the preserve?

Mr. MOTT. I think this is part of the record. We have made our statement very strong, and I think the integrity of the National Park Service since 1916 can be checked and you will find that when I make a statement of this kind for the National Park Service, that my successors will also abide by that statement.

Senator NICKLES. I would concur with that and I would concur with Chairman Bumper's statement. I think you have done an outstanding job as director of the Park Service. You really have been a shining star, and I think you have done an outstanding job. I compliment you for it.

In response to Senator Bumper's question of prioritizing the various lands and land acquisitions, did you state that this would be your number one priority as far as land acquisition within the Park Service?

Mr. MOTT. Yes. I absolutely feel that this is the highest priority we could give for any land acquisition. We do have other areas that need to be acquired, but they are not as critical or as important as the acquisition of this tallgrass prairie park.

Senator NICKLES. I read in today's paper that there have been bills introduced to purchase land adjacent to the Manassas Battlefield area. I think we're talking about—500 acres. What is the estimated value of purchasing that land? In the hundreds of millions of dollars?

Mr. MOTT. Mr. Chairman, we believe that through negotiations we can solve the basic problems at Manassas by the closing of the bisecting roads in Manassas, and the developer can continue with the development provided he goes to the lower elevation and gives us the property on the top of hill for interpreting Lee's headquarters and the adjoining parklands. I would consider this more important than the acquisition at Manassas because I think we can accomplish the objective without acquiring the land, and that is to close those roads.

Senator NICKLES. It would also be a lot less expensive.

Mr. MOTT. Absolutely.

Senator NICKLES. It would definitely be less expensive, even if you're talking about $50 million or $60 million. The Manassas purchase would be about 500 acres. Our Preserve would comprise about 50,000 acres of fee area and another 50,000 in easements. So, 100,000 acres would still be significantly less expensive due to the location, et cetera.

One final question. You mentioned that this would be the highest priority, and you also mentioned that in the budget for next year as well as last year, the administration requested basically zero for new acquisitions. Congress, in spite of that administration request, has seen fit in the past couple of years to provide about $100 million for land acquisition. If Congress continued on that trend and appropriated comparable amounts or identical amounts of $50 million or $60 million for land acquisition, would you agree with me that money well spent would be toward the tallgrass prairie?

Mr. MOTT. I think the wisdom of the Congress in this particular case would prevail, and I think that the suggestions by the Chairman of how that money could be arrived at are very valid.

Senator NICKLES. That was stated very diplomatically. [Laughter.]

Director Mott, thank you very much. I appreciate your assistance for this project.

Senator BUMPERS. Director Mott, let me correct one thing. I did not vote for your confirmation because you aren't confirmed by the Senate. But had I had an opportunity to, I would have happily done it.

Mr. MOTT. Thank you.

Senator BUMPERS. Thank you very much for your testimony.

At this point I'm going to turn the gavel over to my colleague Senator Nickles temporarily to resume this hearing. And let me also say to the remaining witnesses that the 3- to 5-minute rule will now take effect, and I say that to emphasize it so that none of Senator Nickles' constituents will think he is being rude or mistreating them or cutting them off prematurely.

Our next witnesses constitute our first panel, and they are Joseph H. Williams, chairman of The Nature Conservancy from Tulsa; Michael Wachtman, mayor, city of Pawhuska; Lee Holcombe, chairman, Tallgrass Prairie Preserve Task Force; and Harvey Payne, northeast regional vice president, Oklahoma Wildlife Federation. Gentlemen, welcome. I will turn you over to the tender mercies of your junior Senator.

Senator Nickles [presiding]. Mr. Chairman, thank you.

Mr. Williams, are you ready to proceed?

STATEMENT OF JOSEPH H. WILLIAMS, CHAIRMAN, BOARD OF TRUSTEES, OKLAHOMA CHAPTER, THE NATURE CONSERVANCY

Mr. WILLIAMS. Thank you, Mr. Chairman and members of the subcommittee. My name is Joe Williams. I am chairman of the board of trustees of the Oklahoma chapter of The Nature Conservancy and a member of the conservancy's national board of governors. I would like to thank the members of the subcommittee for this opportunity to present our views on S. 1967, a bill to establish the tallgrass prairie preserve in the State of Oklahoma.

The Nature Conservancy is a national, nonprofit, land conservation organization with over 400,000 members, including more than 2,000 Oklahomans. Our sole purpose is to identify and protect ecologically significant natural areas and the diversity of life they support.

I am here today to express The Nature Conservancy's enthusiastic support for S. 1967 and to urge the committee to approve this legislation and to preserve an outstanding example of tallgrass prairie habitat before it is too late.

Establishment of the National Tallgrass Prairie Preserve has been a national objective of The Nature Conservancy for many years, and the first priority of the Oklahoma chapter since its formation. The Nature Conservancy has continuously given its unqualified support to the congressional delegation in this effort.

We know that as few as 150 years ago, the great tallgrass prairie of central North America covered 250 million acres of the midwest from what is now Indiana to Kansas and from Canada to Texas. Today only a few remnants of this diverse grassland system are left, many of them scattered across the country in such small plots as old cemeteries and railroad rights of way. A generous guess at the current size of tallgrass prairie reserves is about a million acres, four-tenths of 1 percent of our continent's original tallgrass. Given these statistics, the tallgrass prairie may be North America's most endangered ecotype.

In addition, we know that loss and abuse of tallgrass habitat has resulted in serious reduction of many plants and animals dependent upon this unique ecosystem. Overgrazing, a common occurrence on much of the native prairie that remains will skew the composition of the system, discouraging and eventually eliminating many of the species. For example, eastern gammagrass, a high volume, nutritious grass that some authorities believe could be an excellent food source for humans, has been killed out by close grazing on most ranges, even within the proposed site of the preserve as well. The gray wolf, elk, pronghorn antelope and bison, among others, have been eliminated from the tallgrass heartland. Other species, such as the prairie white-fringed orchid, Franklin's ground squirrel, greater prairie chicken and the regal fritillary, while still surviving in the remaining tallgrass, have become a rarity throughout their range.

However, there is one place where many of these species still thrive and the tallgrass prairie remains as the pioneers saw it, vast, rolling expanses of tallgrass reaching beyond the horizon, and that place is in Osage County, Oklahoma and is the proposed site of the National Tallgrass Prairie Preserve.

There are many natural and historical factors which have contributed to the survival of this tallgrass prairie. Perhaps most importantly the area is characterized by a surprisingly small number of ranches with large land holdings. Today, however, pressures to break up the ranches have reached the point where all of the selected area is currently for sale. It now appears it is extremely unlikely that these large ranches can survive or be sold without subdivision which would threaten the unique natural values S. 1967 proposes to preserve. Therefore, we believe that failure to act quickly to create the national tallgrass prairie preserve could result in the loss of an important element of our Nation's natural heritage.

Beyond the biological and ecological reasons to create the national tallgrass prairie preserve, Oklahoma deserves more Park Service properties. Oklahoma ranks near the bottom of all states in the number of national park system installations. In fact, Oklahoma currently has only one. This compares to a total of 47 in the six States which border Oklahoma.

Further, studies have shown that Oklahoma would benefit economically from establishment of the National Tallgrass Prairie Preserve. An economic impact analysis of the proposed preserve estimated that it could result in up to 500 new jobs and $14.5 million annually to Osage County.

In summary, we feel our congressional representatives have been particularly responsive to the needs of all parties interested in the creation of this preserve. We applaud their efforts which have resulted in a balanced compromise that protects and enhances the area's historical, cultural and economic integrity, as well as its biological heritage.

It is time to act to create this preserve. Pressures to subdivide the ranches continue to increase and the cattle market is showing signs of strengthening. There may never be another chance to create a National Tallgrass Prairie Preserve. The Nature Conservancy believes that S. 1967 is clearly our best chance to create such a preserve. And we urge you to act now to create such a preserve.

If I may conclude with one final personal, Senator. Man is a very dependent animal in an interdependent world. And our principal dependency is upon grass. Corn is a grass. Wheat is a grass. Sugar cane is a grass, and most of our animals feed upon grasses or their derivatives. Considering this dependency, it seems to me to be biological roulette to allow ourselves to destroy or not preserve one of these last great reservoirs of original grasses in diversity.

Thank you, sir.

[The prepared statement of Mr. Williams follows:]

The Nature Conservancy

Oklahoma Chapter
320 South Boston, Suite 846 / Tulsa, Oklahoma 74103 / (918) 585-1117

BOARD OF TRUSTEES
Chairman
Joseph H. Williams
Tulsa
Vice Chairman
W. C. (Bill) Kerr
Oklahoma City
Secretary
Frederick Drummond
Pawhuska
Treasurer
Robert E. Lorton
Tulsa
Molly Shi Boren
Seminole
John Burns
Pauls Valley
Dr. Jerry Crockett
Stillwater
Sam Daube
Ardmore
Leonard J. Eaton Jr.
Tulsa
William L. Ford
Shawnee
John J. Kilpatrick
Oklahoma City
James C. Leake
Muskogee
Frank A. McPherson
Oklahoma City
Lew Meibergen
Enid
George Records
Oklahoma City
C. J. (Pete) Silas
Bartlesville
Claude M. West
Oklahoma City
Dr. Raines Williams
Oklahoma City
Jack Zink
Sand Springs

STATEMENT OF JOSEPH H. WILLIAMS
CHAIRMAN, OKLAHOMA CHAPTER BOARD OF TRUSTEES
AND MEMBER, NATIONAL BOARD OF GOVERNORS
OF THE NATURE CONSERVANCY BEFORE THE PUBLIC LANDS,
NATIONAL PARKS AND FORESTS SUBCOMMITTEE OF THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

MAY 26, 1988

Mr. Chairman, members of the subcommittee, my name is Joe Williams. I am Chairman of the Board of Trustees of the Oklahoma Chapter of The Nature Conservancy and a member of the Conservancy's national Board of Governors. I would like to thank you, Mr. Chairman, and the members of the subcommittee for this opportunity to present our views on S 1967, a bill to establish the Tallgrass Prairie National Preserve in the State of Oklahoma. I would also like to commend Senator Don Nickles and all the members of the Oklahoma Congressional Delegation for their sponsorship and support of this legislation.

The Nature Conservancy is a national, non-profit, land conservation organization with over 400,000 members, including more than 2,000 Oklahomans. Our sole purpose is to identify and protect ecologically significant natural areas and the diversity of life they support. The Nature

Conservancy has been responsible for the preservation of over 3 million acres of critical natural habitat since 1954 and today manages the largest private preserve system in the world. We have also assisted the federal government with more than $200 million worth of land acquisition, at an estimated savings to the government of $75 million.

The Oklahoma Chapter of The Nature Conservancy was formed in July 1986 to identify and preserve our state's vanishing natural heritage. The Chapter has attracted leading representatives of Oklahoma business, civic, educational and scientific interests to its board of trustees. The Chapter has already been responsible for the protection of over 8,000 acres of threatened wild lands in Oklahoma.

I am here today to express The Nature Conservancy's enthusiastic support for S 1967 and to urge the committee to approve this legislation to preserve an outstanding example of tallgrass prairie habitat, before it is too late.

Establishment of the National Tallgrass Prairie Preserve has been a national objective of The Nature Conservancy for many years and the first priority of the Oklahoma Chapter since its formation. The Nature Conservancy has continuously given its

unqualified support to the Congressional delegation in this effort.

As the foundation of its work, The Nature Conservancy scientifically identifies the most important targets for conservation through a series of computerized databases called Heritage Programs. Heritage Programs, run by ecologists, botanists, zoologists and environmental scientists, combine extensive field work and computer information systems to compile data on the existence, characteristics, numbers, condition, status, location and distribution of rare and declining species and habitats and other uncommon natural features in a state or region. Oklahoma's heritage program has identified tallgrass prairie habitat, and in particular this area of Osage County, Oklahoma, as a high priority for protection.

We know that as few as 150 years ago, the great tallgrass prairie of central North America covered 250,000,000 acres of the Midwest, from what is now Indiana to Kansas and from Canada to Texas. Today, only a few remnants of this diverse grassland system are left, many of them scattered across the country in such small plots as old cemeteries and railroad rights-of-way. A generous guess at the current size of tallgrass prairie reserves is 1,000,000 acres -- four-tenths of one percent of our

continent's original tallgrass. Given these statistics, the tallgrass prairie may be North America's most endangered ecotype.

In addition, we know that loss and abuse of tallgrass habitat has resulted in serious reduction of many plants and animals dependent upon this unique ecosystem. Overgrazing, a common occurrence on much of the native prairie that remains, will skew the composition of the system, discouraging and eventually eliminating many of the species. For example, eastern gammagrass, a high volume, nutritious grass, that some authorities believe could be an excellent food source for humans, has been killed out by close grazing on most ranges -- even within the proposed site of the preserve. The gray wolf, elk, pronghorn antelope and bison, among others have been eliminated from the tallgrass heartland. Other species, such as the prairie white-fringed orchid, Franklin's ground squirrel, greater prairie chicken and the regal fritillary (a butterfly), while still surviving in the remaining tallgrass, have become a rarity throughout their range.

However, there is one place where many of these species still thrive and the tallgrass prairie remains as the pioneers saw it -- vast, rolling expanses of tallgrass reaching beyond the horizon. That place is in Osage County, Oklahoma and is the

proposed site of the National Tallgrass Prairie Preserve.

There are many natural and historical factors which have contributed to the survival of this tallgrass prairie. Perhaps most importantly, the area is characterized by a surprisingly small number of ranches with large land holdings. Today, however, pressures to break-up the ranches have reached the point where all of the selected area is currently for sale. It now appears it is extremely unlikely that these large ranches can survive or be sold without subdivision, which would threaten the unique natural values S 1967 proposes to preserve. Therefore, we believe that failure to act quickly to create the National Tallgrass Prairie Preserve could result in the loss of an important element of our nation's natural heritage.

Beyond the compelling biological and ecological reasons to create the National Tallgrass Prairie Preserve, Oklahoma deserves more Park Service properties. Oklahoma ranks near the bottom of all states in the number of National Park System installations. In fact, Oklahoma currently has only one -- the Chickasaw National Recreation Area. This compares to a total of 47 in the six states which border Oklahoma. Furthermore, Chickasaw National Recreation Area has the highest visitor use rate in the Southwest Region. We feel Oklahomans have a legitimate claim to

another National Park Service unit.

Additionally, studies have shown that northeast Oklahoma, indeed the whole state, would benefit greatly from establishment of the National Tallgrass Prairie Preserve. An economic impact analysis of the proposed preserve conducted at the request of the Osage County Commission by the Indian Nations Council of Governments estimated that the proposed preserve could result in up to 500 new jobs and $14.5 million annually to Osage County.

Finally, the history of the Osage Hills area is dramatic and provides a diverse story that could be presented to the visiting public if a National Park System unit is established.

In summary, we feel our Congressional representatives have been particularly responsive to the needs of all parties interested in the creation of this preserve. We applaud their efforts, which have resulted in a balanced compromise that protects and enhances the area's historical, cultural and economic integrity, as well as its biological heritage.

The Nature Conservancy believes that S 1967 is clearly our best chance to create such a preserve. We urge you to act now to create the National Tallgrass Prairie Preserve.

This concludes my statement. Thank you for your attention. I would be happy to answer any questions.

Senator NICKLES. Mr. Williams, thank you very much for your comments.

Our next panelist we have is Mayor Michael Wachtman from Pawhuska, OK.

STATEMENT OF MICHAEL WACHTMAN, MAYOR, PAWHUSKA, OK

Mr. WACHTMAN. Thank you, Mr. Chairman. I thank you for the opportunity to give testimony in favor of Senate bill 1967. My name is Michael Wachtman. I'm the mayor of Pawhuska, OK, the county seat of Osage County. I'm a lifetime resident of Pawhuska and Osage County. I have been an independent oil producer. I have owned and operated two oil service companies for the past 16 years.

Since the late 1970's I was a consultant for several oil companies from different States, including Colorado, Texas and California. I had the responsibility of drilling and completing new wells. In the process I was able to drill some wells inside the boundaries of Wooloroc Park in Osage County. The requirements were much more stringent, but we were able to do it at a small additional cost.

I would like to State that while I am in strong support of this bill, I would like to emphasize the need for local control and input as to the establishment of the laws that govern this preserve. By local control I think we should have a member of the tribal council, a member of the Cattlemen's Association and also an independent producer on the governing board. We in no way want to jeopardize the agriculture or mineral rights in Osage County.

The basic economy of Pawhuska and Osage County is oil and agriculture. Both have been experiencing very depressed markets in recent years. The economy in Osage County is downright terrible at the present time.

Since the beginning of the economic downturn of oil and gas and agriculture, the city of Pawhuska has experienced a 26 percent loss in sales tax revenue. We have experienced a 12 percent loss in residential utility customers, a 14 percent loss in commercial utility customers. Our estimated population of 4,935 has dwindled to an estimated low of 4,250, a loss of 685 people representing 274 households.

We are realizing that we must diversify our economic base in the city. The city has established an economic development director in the department in city government. We are making some progress in that field, but I must emphasize that the field of economic development by city governments is very competitive and extremely expensive.

In Osage County we have not been able to recruit big industries such as Kimberly-Clark plant or a General Motors plant. But what we do have is a lot of beautiful open prairie land. Statistics tell us that the development of existing local industries is the fastest growing form of economic development in Oklahoma. They further state that tourism is the second largest industry in Oklahoma. The scenic prairie itself is a natural local industry for Osage County just as natural as the oil and gas beneath it, just as natural as the cattle that graze upon it. The prairie of Osage County is our local

industry waiting to become a part of the number two major industry in the State of Oklahoma, tourism.

Establishment of the Tallgrass Prairie Preserve would initiate a new era in Osage County. The people will respond and there will be new opportunities which never before were available. Besides the economic growth within the community, the prairie itself will be protected.

In support of the National Tallgrass Prairie Preserve, the city has passed two resolutions which are attached to my written statement which was provided in advance of this testimony. I just stress that adequate protection be provided for the oil and agriculture industries and that strong local control be written into the powers of the governing preserve board.

Thank you for giving me this opportunity to testify.

[The prepared statement of Mr. Wachtman follows:]

City Manager
918-287-3576

Pawhuska
A pleasant community with a lot to offer

City Clerk
918-287-1798

May 23, 1988

Honorable Dale Bumpers
United States Senator
Chairman - Subcommittee on Public Lands, National Parks and Forests
Washington, D. C. 20510-6150

Re: Establishment of Tallgrass Prairie National Preserve in Osage County

Dear Senator Bumpers:

Thank you for the opportunity to give testimony in favor of Senate Bill S. 1967.

My name is Michael Wachtman. I am the Mayor of Pawhuska, Oklahoma, the county seat of Osage County. I am a lifetime resident of Pawhuska and Osage County. I have been an independent oil producer and own and operate two oil service companies, for the past 16 years. My father has been in the oil business in Osage County for 38 years.

Since the late 1970's I have been a consultant for oil companies from Colorado, Texas and California. I had the responsibility of getting new wells drilled and completed. While working for a California based company I had the opportunity of drilling a few wells inside the boundaries of Woolaroc Park, in Osage County. The requirements were more stringent inside the park area than outside, but we were able to complete the work satisfactorily, at a small percentage of additional cost.

I would like to state that while I am in strong support of this bill, I would like to emphasize the need for local control and input as to the establishment of the laws that will govern this park. By local control I think there should be a member of the Osage Tribal Council, a member of the Cattlemens Association, and an independent oil producer. We in no way want to jeopardize the agriculture and mineral rights in Osage County.

The basic economy of Pawhuska and Osage County is oil and agriculture. Both have experienced a very depressed market in recent years. Gentlemen, the economy in Osage County is downright terrible.

Since the beginning of the economic downturn of the oil and agriculture industries the City of Pawhuska has experienced a twenty-six percent (26%) loss of sales tax revenue. We have experienced a twelve percent (12%) loss in residential utility customers and fourteen percent (14%) loss in commercial utility customers. Our estimated population of 4,935 in 1982 has dwindled to a new estimated low of 4,250. A loss of 685 persons representing 274 households.

We are realizing that we must diversify our economic base. The City of Pawhuska has established an economic development department in the City government. We are making some inroads, but I must emphasize that the field of economic development by City governments is very competitive and extremely expensive. In Osage County we have not been able to recruit a major industry such as, a Kimberly-Clark plant, nor a General Motors plant. We do not even have a major beef packing plant in the largest beef producing county in the State of Oklahoma.

What we do have is a lot of beautiful open prairie land. Statisticians tell us that the development of existing local industries are the fastest growing forms of economic development. They further state that tourism is the second largest industry in Oklahoma. The scenic PRAIRIE itself is a natural local industry for Osage County. Just as natural as the oil and gas beneath it, and just as natural as the cattle that graze upon it. The PRAIRIE of Osage County is our local industry waiting to become a part of the number two major industry in the State of Oklahoma - TOURISM.

The establishment of the Tallgrass Prairie National Preserve will initiate a beginning of a new era in Osage County. The people will respond, and there will be new opportunities which never before have been available. Besides the economic growth within the community, the prairie itself will be protected. We have an opportunity to present to the American people a true picture of how the early inhabitants of this beautiful land roamed, hunted and lived in the prairie.

In support of the Tallgrass Prairie National Preserve the City has passed two resolutions which are attached to this written statement provided in advance of my testimony. We must stress that adequate protection be provided for the oil and agriculture industries and that strong local control be written into the powers of the governing preserve board.

Thank you for giving me the opportunity of this testimony.

Sincerely,

Michael A. Wachtman
MAYOR
CITY OF PAWHUSKA, OKLAHOMA

MAW:ct

Enclosures

RESOLUTION

WHEREAS, it has been proposed that there be established in Osage County, Oklahoma, a National Prairie Park Preserve; and

WHEREAS, United States Senator Donald L. Nickles previously appointed a Task Force of Osage County residents to study the proposed Park, which Task Force, after detailed study, recommended that said National Prairie Park Preserve be established; and

WHEREAS, concerned citizens of Pawhuska, Oklahoma, have appeared before the City Council and requested that said City Council endorse the establishment of said National Prairie Park Preserve; and

WHEREAS, the City Council believes that it will be to the benefit of the City of Pawhuska, Oklahoma and its inhabitants that a National Prairie Park Preserve be established, provided it is established in accordance with the recommendation of the Osage County Task Force and does not contain provisions which would be detrimental to agricultural operations or oil and gas ownership by the Osage Tribe of Indians or development thereof.

NOW, THEREFORE, the Council of the City of Pawhuska, Oklahoma, does hereby endorse the establishment of a National Prairie Park Preserve and encourages Senator Nickles to introduce legislation in support thereof, provided it is established in accordance with the recommendations of the Osage County Task Force and does not contain provisions detrimental to agricultural operations or oil and gas ownership by the Osage Tribe of Indians or development thereof.

BE IT FURTHER RESOLVED that a copy of this Resolution be mailed to all members of the Oklahoma Congressional delegation.

DONE this 5TH day of August, 1985.

CITY OF PAWHUSKA, OKLAHOMA
A Municipal Corporation

By Ronald E Fedor
Ronald E. Fedor, Vice Mayor

ATTEST:

Opal L. Hamlin
Opal L. Hamlin, City Clerk

RESOLUTION

WHEREAS, it has been proposed that there be established in Osage County, Oklahoma, a Tallgrass Prairie National Preserve; and

WHEREAS, United States Senator Donald L. Nickles previously appointed a Task Force of Osage County residents to study the proposed Preserve, which Task Force, after detailed study, recommended that said Tallgrass Prairie National Preserve be established; and

WHEREAS, in accordance with the studies and recommendations made, there has been introduced in the United States Senate under Senate Bill Number S. 1967 and in the United States House of Representatives under House Bill Number H.R. 3803 legislation to establish said Tallgrass Prairie National Preserve; and

WHEREAS, the City of Pawhuska, Oklahoma, previously on August 5, 1985, passed a Resolution encouraging United States Senator Donald L. Nickles to introduce in the Senate the legislation which is now pending for the establishment of said Tallgrass Prairie National Preserve; and

WHEREAS, concerned citizens of Pawhuska, Oklahoma, have appeared before the City Council and requested that the Council endorse the establishment of said Tallgrass Prairie National Preserve; and

WHEREAS, the City Council believes it will be to the benefit of the City of Pawhuska, Oklahoma, and its inhabitants and to the surrounding area that a Tallgrass Prairie National Preserve be established as proposed in the pending Bills and as recommended by the Osage County Task Force with provisions which would not be detrimental to agricultural operations or oil and gas ownership by the Osage Tribe of Indians or the development thereof.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Pawhuska does hereby endorse and encourage the passage of legislation now pending before the United States Congress for the establishment of the Tallgrass Prairie National Preserve and encourages support of said legislation as introduced which does not contain provisions detrimental to agricultural operations or oil and gas ownership by the Osage Tribe of Indians or the development thereof, all as provided and endorsed by the Osage County Task Force.

BE IT FURTHER RESOLVED that a copy of this Resolution be delivered to all members of the Oklahoma Congressional Delegation and to all committee members giving study to the proposed legislation.

DONE this the 23 day of May, 1988.

CITY OF PAWHUSKA, OKLAHOMA
A Municipal Corporation

By Michael A. Wachtman
Michael A. Wachtman
Mayor

ATTEST:

Lucile Smith
Lucile Smith, City Clerk

(SEAL)

Senator BUMPERS. Mr. Wachtman, thank you very much for your statement.

Our next panelist is Lee Holcombe who is chairman of the Tallgrass Prairie Preserve Task Force.

Mr. Holcombe?

STATEMENT OF LEE HOLCOMBE, CHAIRMAN, TALLGRASS PRAIRIE PRESERVE TASK FORCE

Mr. HOLCOMBE. Mr. Chairman, I am Lee Holcombe, chairman of your Tallgrass Prairie Task Force created in the fall of 1984.

In the time allotted today, I can't begin to give an adequate background of the work of this group, but I would hope that the written testimony presented would indicate the hours and hours of time and effort put forth by this task force, a study, I might add, that ultimately changed the position of several of our members from negative to positive.

As chairman of the task force, as an active Osage County rancher, and as a past president of the Osage County Cattlemen's Association, I would like to add my endorsement to the establishment of this preserve as proposed in the legislation that you are considering today.

I am a second generation rancher in Osage County, and my son is continuing a third generation in managing the tallgrass prairie, this wonderful resource for which we have such a strong affinity. As ranchers, our ultimate long-term success lies with the preservation of this valuable asset. I strongly believe it is appropriate to set aside a small area of this prairie for the enjoyment and education of future generations.

I feel very strongly that the legislation concerning the management of the grass and the establishment of a research facility are the very heart of the Tallgrass Prairie Preserve. Range science, especially in regard to the tallgrass prairie, is in many respects in its infancy. The chance to slow the deterioration of our prairies with new and different management techniques should be a concern not only of the rancher who depends on the grass of the prairie for his income, but to you as consumers who depend on agriculture to continue to fill your plates with a nutritious and economical food supply.

It is not the intent of this legislation to take the management ability away from the National Park Service, but to provide it with the management expertise of ranchers who are good stewards of these grasses and range science specialists who are searching for new and economical ways to improve our plant community while still keeping the rancher in business.

By necessity, the thrust of the management of the prairie must be what is good for the grass, not now many pounds of beef can be produced from an acre of this grass because in the long run the maximum economic return will have to come from the stewardship of this generation and coming generations that the good Lord has given us the opportunity to use and enjoy.

Thank you.

[The prepared statement of Mr. Holcombe follows:]

STATEMENT SUBMITTED TO THE PUBLIC LANDS, NATIONAL PARKS AND FORESTS SUBCOMMITTEE OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

May 26, 1988

By Lee Holcombe, on behalf of the Tallgrass Prairie Preserve Task Force

In the fall of 1984, Senator Don Nickles, after a town meeting in Pawhuska when the pressure for a tallgrass prairie park or preserve became apparent, elected to appoint a task force composed of representatives from the Osage Tribal Council, Pawhuska Chamber of Commerce, Osage County Commissioners, Oklahoma Wildlife Federation, Oklahoma Independent Petroleum Association and the Osage County Cattlemen's Association.

The Osage Tribal Council representative was Mr. Bill Martin, a long time member of the Council; the Chamber of Commerce representative was Mr. Tom Quinn, a local newspaper editor; the Osage County Commissioners appointed Mr. Harold Murnan, Commissioner from District #1 and who had recently retired as County Farm Agent; the Oklahoma Wildlife Federation appointed Mr. Harvey Payne, an attorney in Pawhuska, but also from a ranching family; and the Osage County Cattlemen's Association representative was me, Lee Holcombe, a rancher from the Pawhuska and Bowring area. The O. I. P. A. declined an appointment. The task force members as a group were probably more inclined initially to be in opposition to the idea of this proposed prairie park. Senator Nickles' only charge to us as a task force was to separate some of the emotional issues on both sides and to determine in our own opinions if this project was feasible.

Our first priority was to decide which direction we were going to move as a task force, and it became obvious that the first question we had to answer was "What is a national park and what impact both negative and positive would it have on this area". We brcke these priorities down further into such areas as oil production, cattle grazing, effect on the local and county tax base, what effect a project of this type would have on government entities, our local, county and even state government. We also realized the need to look at the economic affect of a project of this size, and to the quality of life that a project of this magnitude might have on this area. To become more familiar with the National Park System, we all devoured volumes of material presented not only by the park service but by the opponents of the plan. However, to really get a feel of what the National Parks System was like, we felt we needed to visit some of their facilities and find out first hand the impact of the national parks on those local communities.

In January, 1985, the task force visited the Chickasha National Recreation Area, Grand Teton National Park, Badlands

National Park and also some other national park's facilities around Rapid City, South Dakota. At each facility we had the opportunity to meet one-on-one with the local citizens, businessmen, county commissioners, environmentalists, and at the Grand Tetons and Badlands Parks, we had the opportunities to visit with many ranchers who either ranched within the park system or on the edge of the park. Their support for the park's facilities in their areas was for the most part unanimous, and the statement that we kept hearing again and again was for us, by all means to become involved in the legislation before it was enacted. We learned at every visit that enabling legislation is the most important step in the development of the park. Many of the objections that some of the local people had were fostered by parks that were developed by outside interests and were forced upon the areas without the input and support of the local citizens.

We next began an interview process as a task force, besides the many personal contacts that we each had, to interview oil men, ranchers, Osage Tribal members, school superintendents, local businessmen, enviornmentalists and wildlife groups. During all this time we were receiving numerous letters from national organizations and individuals all across the United States with almost all the letters in support of the national prairie preserve facility in Osage County.

By this time the task force had sorted out many of the part truths and innuendos that had been pushed by both sides of the issue, and we determined that through our input in writing the enabling legislation, we could control the direction that this facility might take by ensuring that there would be cattle grazing on the fee land, oil production would continue, as well as hunting and fishing, and we could ensure that the land was purchased from willing sellers only. It was obvious that many of us who were initially opposed on the task force could be in favor of a national park facility in Osage County under certain guidelines, and with this in mind, the task force began the task of defining this facility - size, ideas about the community's input, grass management, replacement of lost tax revenue and other issues. In June, 1985, we presented a letter to Senator Nickles stating our support for such a facility if it could be built within the recommendations and guidelines of the task force. A copy of the letter is attached. I would hope that this letter and the proposals for the establishment of this preserve would indicate the hours and hours of time and effort put forth by this task force. As chairman of the task force, and as a representative of the Osage County Cattlemen's Association on the task force, I want to add my endorsement to the establishment of this preserve as proposed in the legislation that you are studying today.

I believe that this committee should be aware that the Osage County Cattlemen's Association, although divided to some degree on this issue, has still remained a strong, cohesive organization.

I am a second generation rancher in Osage County and my son is continuing as a third generation in managing the tallgrass

prairie, this wonderful resource of which we have such a strong affinity. As ranchers our ultimate long term success lies with the preservation of this valuable resource. I deeply believe it is appropriate to set aside a small area of this unique resource for the enjoyment and education for all future generations. I feel very strongly that the proposals for the management and the establishment of a research facility are at the very heart of this legislation. Range Science, especially, in regards to the tallgrass prairie is in many incidences in its infancy. The chance to halt the slow deteriation of our beautiful prairies with new and different management techniques should be a concern not only of the cattleman who depends on this prairie for his income, but for you as consumers depending on agriculture to continue to fill your plates with a nutritious and an economical food supply. It is not the intent of this legislation to take the management ability away from the National Park Service, but to provide it with the best advice available today from ranchers who are good stewards of this grass and from range science specialists who are searching for new and economical ways to improve our plant community while still keeping the rancher in business.

By necessity the thrust of the management of the prairie must be what is good for the prairie, not how many pounds of beef can be produced from an acre of this grass, because in the long run, the maximum economic return will have to come from the stewardship by this generation and coming generations of this unique resource that the good Lord has given us the opportunity to use and enjoy. Thank You.

June 4, 1985

Senator Donald L. Nickles
Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Nickles:

Although it has only been seven (7) months since the PRAIRIE PARK TASK FORCE was appointed, it seems more like several years to the members of this committee. What most of us had expected to be a rather simple task turned into a rather complex process of educating ourselves to just what a National Park could be, exploring the myths of tourist numbers, land acquisition, effects on oil production, effects on our tax income and the list goes on and on.

Because of what we have discovered, several of the Task Force members have changed their initial feelings about the Park completely and certainly the rest are supporting the Park from a different perspective.

This letter carries our recommendation that you and the rest of our congressional delegation support the development of a National Prairie Preserve to be built in Osage County. This recommendation comes from this Task Force only if the Preserve can be built within the guidelines and basic concepts which we have developed and are enclosing with this letter.

The Task Force from the first was surprised and impressed by the great interest in this project by many national groups and even international groups. We received many letters of support from individuals from all over the United States. The fact that only three percent (3%) of the Tallgrass Prairie exists today of the millions of acres that originally spread over the states of Texas, Oklahoma, Kansas, Nebraska, Missouri, Iowa, Illinois and Parts of Minnesota and Wisconsin was, of course, the underlying reason for this support. These supporters are joined by wildlife groups, local and area business people looking for ways to improve the economic climate of the area, those people who think that only the Park Service is capable of managing the Tallgrass Prairie and recreationists who jump to support any development of state or national recreational sites. This support, whether proper or improper, was the stone that was at our back as we tried to determine how the people of Osage County would react to the development of a national park in this area.

Without a doubt, the local business community of Osage County and adjoining towns and counties are by a vast majority in favor of this project. Although projected visitor numbers may have initially been overstated, we feel that there is a potential for a large number of visitors each year if developed within the guidelines we are suggesting. The subsequent development of a tourist industry would definitely have a positive economic impact on not only Osage County but all of this area of Oklahoma and Kansas.

The Osage Tribal Council has been put in a difficult position of protecting the mineral estate of the tribe and the land of individual tribal members, while at the same time supporting the concept that a tourist industry could be helpful to the tribe as well as the County. Hopefully, the problems concerning the mineral estate and land have been addressed in our guidelines for the Park. The Council should, of course, be consulted during the development of any enabling legislation.

The Osage County Cattlemen's Association has been placed in the same difficult position. The membership is split on support for the Park but have agreed to participate in the development of legislation if the Task Force recommends the support of the project.

We learned early in our work that each individual National Park unit is guided by the enabling legislation. If this legislation has the input from the local community, many problems can be addressed before they happen. Naturally, the next step is to take this legislation to Washington and return with the original intent in place.

Considering the tremendous outside pressures which will not dissipate and the apparent willingness of our congressional delegation to work together if this project is feasible, we feel the time is right to pursue this project. The Task Force thinks it is imperative that local citizens have their feelings expressed in the legislation rather than have a Preserve forced on us at a later date in which we conceivably could have little input.

Truly as important as any reason for supporting the Preserve is the feeling by the Task Force that the Park Service is capable of creating a National Prairie Preserve and Education Center that all of the citizens of this area will be proud of. The concept of an educational center to educate all ages to the interaction of the tallgrass prairie on the ranching

and Indian cultures of which we are all so proud is truly exciting. It probably can best be summed up by simply stating, we think the Park Service will be good neighbors.

Our Task Force has appreciated the opportunity to work with you and your office on the complex issues and stands ready to be of any further assistance.

Yours very truly,

Lee Holcombe

Lee Holcombe

Harvey Payne

Harvey Payne

Tom Quinn

Bill Martin

Bill Martin

Harold Murnan

RECOMMENDATIONS FOR ESTABLISHMENT OF PROPOSED PRAIRIE PRESERVE

The purpose of the proposed Tallgrass Prairie Preserve shall be to perpetuate the ecology of the tallgrass prairie as it exists now, to develop an ecosystem that would naturally duplicate the tallgrass prairie of the past and to contribute to the continuation of this prairie by allowing research to determine the proper way to manage this prairie both economically and ecologically.

Because of the impact this prairie has had on two important segments of our society, the Indian culture and the ranching industry, it would seem appropriate to highlight the ways these two segments adapted to and developed with the prairie.

To accomplish these goals we propose the development of a "core area" near the town of Pawhuska, Oklahoma, which would provide relatively easy access from a major highway and serve as the main entrance to the Preserve. This core area should include a visitor and nature center that will enable the Park Service to educate the public of all ages to the complexities of the prairie ecosystem and how this system was adapted to and affected by the Indian culture and the ranching industry. The core area would be the logical place due to terrain and the close proximity of the visitor and nature center to develop the majority of the recreational areas for camping, nature trails, etc. The Park Service should be authorized to negotiate with the City of Pawhuska as to the appropriate use, management and ownership of Bluestem Lake and the surrounding area.

This core area would perhaps be the appropriate location to develop an ecosystem of the past wherein native animals of this particular prairie can be placed in their natural habitat. We feel only those animals that now exist or have previously existed on this prairie should be included.

The Task Force recommends that the real estate in Osage County, Oklahoma, described in the options secured by The Nature Conservancy be acquired by the National Park Service. The Task Force further recommends that the Park Service conduct a feasibility study to determine the exact acreage to be included in the proposed Tallgrass Prairie National Preserve and that the size of the Preserve should be not greater than 50,000 acres initially. The Park Service should make an orderly disposition of any acreage purchased that exceeds the 50,000 acres to be included in the Prairie Preserve and should consider retaining scenic easements, rights of way, etc., in the surplus acreage. The Task Force strongly recommends that the excess acreage be disposed of in an orderly manner so not to disrupt local land values.

Realizing that the Park Service may not have personnel with tallgrass prairie management experience and background available at all times, we suggest for the sake of continuity of management, that some type of contractual arrangement be developed with Oklahoma State University or other universities or institutes that have Range Scientists available with the expertise to develop short and long range plans for the management of this prairie. These plans should be co-ordinated with and have input from an advisory committee composed of local citizens. This committee should be encouraged to obtain guidance from all available sources.

Because a tallgrass prairie must be harvested in some manner to retain its vigor and character, we propose that approximately seventy-five to eighty percent of the Preserve be leased for livestock grazing under guidelines developed by the National Park Service and assisted by a local advisory committee. These guidelines, however, would have to be consistent with the objectives of the National Park Service in managing the Preserve.

To accomplish the goals of the Prairie Preserve, the National Park Service should be allowed to employ any proven range management tools and methods available, including, but not limited to fire and the application of herbicides.

The National Park Service should comply with the provisions of Title 25 of the Code of Federal Regulations as it applies to leasing of the Osage Reservation lands for oil and gas mining operations.

The National Park Service should be responsible for building and maintaining all roads within the Preserve and for all roads leading to the Preserve from local highways.

To help offset the loss of ad valorem taxes on land taken for the Preserve, funds in lieu of taxes should be paid on all lands taken for the Preserve at a rate at least commensurate with present ad valorem taxes. In addition, an amount of money equal to seventy-five percent of all income derived from the leasing of any of the real estate contained in the Preserve should be paid to Osage County, Oklahoma, by the National Park Service. The funds received by Osage County, Oklahoma, should be divided as follows:

1. Fifty percent to the County general fund;

2. Twenty-five percent to the County sinking fund, provided, that if there is no County bond indebtedness, the said

twenty-five percent shall be paid to the general fund rather than to the sinking fund;

3. Twenty-five percent to be apportioned to the school districts in which the Preserve is located.

The National Park Service should implement a plan for harvesting of wildlife by hunting, trapping and fishing in a manner compatible to the objectives of the Preserve and consistent with State and Federal game laws.

Many proposals for a Tallgrass Prairie Preserve have included large initial acreages of from 76,000 to 375,000 acres. Proponents of these plans have felt that this would be the only way to show the great expanse of the prairie. To save the great expense to the taxpayer of this unnecessary purchase of land, we are suggesting that the National Park Service pursue the obtaining of scenic and conservation easements and/or leases of private lands adjacent and near the Preserve land, where appropriate, to enhance the panarama of the prairie.

It should be implicit that no land shall be obtained for this Preserve by condemnation, excepting roadways, but only by purchase from willing sellers. It should also be implicit that any owners of land situated within the Preserve boundaries that do not sell or lease their real estate to the National Park Service and any landowners that must obtain access to their land across Preserve property shall be allowed access to their real estate.

The National Park Service should work in close consultation with an advisory committee of residents of the community in the preparation and implementation of the management plan for the Preserve, and all matters having an impact on the community.

Senator BUMPERS. Mr. Holcombe, thank you very much for your comments.

Our next panelist is Harvey Payne, representing the Oklahoma Wildlife Federation.

Mr. Payne.

STATEMENT OF HARVEY PAYNE, NORTHEAST REGIONAL VICE PRESIDENT, OKLAHOMA WILDLIFE FEDERATION

Mr. PAYNE. Thank you, Mr. Chairman. My name is Harvey Payne. I'm an attorney from Pawhuska. I have practiced law there for 15 years. I'm testifying today on behalf of the Oklahoma Wildlife Federation, and we thank you for the opportunity to be here today to present our views on this bill.

The Oklahoma Wildlife Federation is a 22,000 member organization dedicated to the conservation and preservation of Oklahoma's wildlife and natural resources. We strongly support this bill.

We want to commend the Oklahoma delegation for the many, many hours of dedicated and sincere service that the delegation and their staffs put into this bill. We feel like that this bill is a legitimate attempt to adequately protect all of the legitimate concerns of interested parties associated with this area. We feel that the bill provides the safeguards to cover these legitimate concerns.

The Oklahoma Wildlife Federation endorses the key elements of the bill. They have been listed today and it's not necessary to list them again.

The only problem that we have with the bill as it is drafted is that we feel that the range management committee should be advisory and that the National Park Service should have the ultimate responsibility of decision making. We feel like that the advisory committee is a very good idea and can be of great benefit to the Park Service in administering the preserve. But we feel that the Park Service should have the ultimate decision making responsibility.

I want to tell you a little bit about my interest and involvement with the prairie. I was born in Osage County. I was educated in Osage County, and my family has been in ranching in the tallgrass prairie area since 1919 when my great grandfather purchased a ranch there. My grandparents, my parents, my four brothers and I and now our children are managing the tallgrass prairie. I tell you this because I want you to know that I have developed a very deep appreciation for and love of the tallgrass prairie. And when you care so much for something such as the tallgrass prairie, it is only natural to want to see it preserved for all Americans and for future generations.

I want to add that we have been members of the Osage County Cattlemen's Association, as Mr. Holcombe's family, for many, many years. The tallgrass prairie is truly a special place. I have sat here today and listened to people describe the tallgrass prairie. Words cannot describe it. One simply has to be there and live the experience. I did bring some photographs that were taken of the area that is to be included in this preserve that I would like to give to the committee to assist in seeing what a special place this is.

But we must act now to preserve the tallgrass prairie. The tallgrass prairie is in wonderful shape. It is the best that we have in America. I'm referring to the tallgrass prairie in Osage County. But it is deteriorating every year. Intensive cattle grazing, aerial application of herbicides, and development have been major factors in impacting this area. They are impacting it right now as we speak today. This area can be preserved now. It can be restored now, but we need to act while that can be done.

This area is not represented in the National Park Service. It was the largest single ecosystem in North America, but nowhere is it represented in the National Park Service. We feel that Americans should have the right to see what the tallgrass prairie was and what it can be.

Furthermore, the land that is now available for purchase from willing sellers has historically not been available. The Barnard Ranch that was talked about earlier was put together in the 1920's and has been in continuous ownership since then. It simply has not been for sale at any price. Now, with a unique set of economic conditions, we have the best prairie that is left in North America that is now for sale. We must act while this opportunity exists. Real estate is a real bargain in Oklahoma. Land prices are the lowest they have been in years. That is another reason that we should act now.

In closing, I want to give you a bit of personal glimpse of the prairie. We lived way out in the country. I mean, we were a long ways from any place. And we worked very hard on the prairie. And I was the oldest of five boys, and you know from being from Oklahoma, when they start passing out chores, they start with the oldest and go on down. So, there were always plenty of chores. But often I would on horseback working cattle or doctoring cattle or just checking them or building a fence, or any of the innumerable tasks that we had. And often I would sit up on top of a hill on the horse and just gaze over the beautiful area in front of me and wonder what this must have looked like 200 years, say, before, before white men came with their buildings, their cattle, their fences, their roads and their developments. And we have a chance now to recapture that and we can show the American people what this country looked like.

I want to tell you that 200,000 Oklahomans support this. I know that because 200,000 Oklahomans have signed petitions circulated by the Oklahoma Wildlife Federation asking that this be done. I urge you to do that.

Thank you for your time.

[The prepared statement of Mr. Payne follows:]

**STATEMENT SUBMITTED TO THE PUBLIC LANDS,
NATIONAL PARKS AND FORESTS SUBCOMMITTEE
OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE**

May 26, 1988

By Harvey Payne, Northeast Regional Vice-President
OKLAHOMA WILDLIFE FEDERATION

Mr. Chairman and members of the Subcommittee, my name is Harvey Payne. I am testifying on behalf of the Oklahoma Wildlife Federation. The Oklahoma Wildlife Federation is grateful for the opportunity to present its views on S. 1967, a Bill to establish the Tallgrass Prairie National Preserve in Osage County, Oklahoma. We thank Senator Nickles and Senator Boren and all the members of the Oklahoma Congressional Delegation for their sponsorship and support of this legislation and thank Senator Bumpers for scheduling this hearing.

I want to tell you a little about my personal interest and involvement with the tallgrass prairie. I live in rural Osage County and own a small portion of the tallgrass prairie which I am attempting to manage to the best of my limited ability. I am an attorney and have practiced law in Pawhuska since 1973. I was born in Shidler in Osage County and have resided in this area for all of my forty years except for time away for college.

My great grandfather was in one of the land runs in Oklahoma and settled in Payne County. In 1919, he purchased a ranch in the tallgrass prairie in Kay County immediately adjacent to the western border of Osage County. The ranch has been continuously operated by members of my family from 1919 until the present. My great grandparents, grandparents, parents, brothers, and now my nephews and nieces, as well as myself, have invested many years of our lives in the tallgrass prairie. My roots are truly in the tallgrass prairie and I have developed a deep appreciation and love for it.

Originally, I was much opposed to the creation of a "prairie park." Earlier proposals for the creation of a "prairie park" called for condemnation of as much as 350,000 acres in Oklahoma and Kansas. A portion of my family's ranch was condemned for the purpose of building the Kaw Reservoir and I had bitter feelings about condemnation. However, when the idea surfaced to create a Tallgrass Prairie National Preserve from willing sellers, and after exploring the potential benefits, most importantly, the preservation of the tallgrass prairie, I changed my mind. I am now a strong supporter of the creation of a Tallgrass Prairie National Preserve.

The Oklahoma Wildlife Federation is a 22,000 member, private non-profit conservation organization dedicated to the preservation of Oklahoma's wildlife and natural resources. The Oklahoma Wildlife Federation has long felt the need to preserve a significant portion of the tallgrass prairie and enthusiastically supports this legislation to create the Tallgrass Prairie National Preserve.

The Oklahoma Wildlife Federation has played an active role in the development of the Bill. In the fall of 1984, Senator Nickles decided to form a Task Force to explore the feasibility and desirability of establishing a Tallgrass Prairie Preserve. He requested that a representative be appointed by six interested groups, namely, the Osage County Cattlemen's Association, Oklahoma Independent Petroleum Association, the Pawhuska Chamber of Commerce, the Board of County Commissioners of Osage County, the Osage Tribe of Indians and the Oklahoma Wildlife Federation. Each group except the Oklahoma Independent Petroleum Association appointed a representative to the Task Force. I was appointed by the Oklahoma Wildlife Federation and served on the Task Force from its inception until its conclusion. The Task Force concluded its work in June, 1985, and unanimously recommended the establishment of a Tallgrass Prairie National Preserve in Osage County.

The Oklahoma Wildlife Federation has collected approximately 200,000 signatures in the State of Oklahoma on petitions in support of establishing the Tallgrass Prairie National Preserve. In addition, the Oklahoma Wildlife Federation has generated between 20,000 and 25,000 letters in support of the Preserve.

The Oklahoma Wildlife Federation participated in the consultation meetings concerning the Tallgrass Prairie Preserve held in Pawhuska, Oklahoma, for two days by the staffs of Senator Nickles, Senator Boren and Congressman Edwards.

At one time, the tallgrass prairie comprised the largest single ecosystem in the United States. The tallgrass prairie encompassed 250 million acres and stretched from Canada to the Gulf of Mexico. It was characterized by Walt Whitman as "The characteristic American landscape." The soils supporting the tallgrass prairie were deep and fertile. Most of the tallgrass prairie was plowed and has been transformed into America's breadbasket. Only one percent to three percent of the tallgrass prairie remains today and it is being heavily impacted by intensive livestock grazing, by the aerial application of herbicides and other forces.

It is important for Congress to act quickly to preserve a significant portion of the tallgrass prairie. Some of the more important reasons for swift action are as follows:

1. The tallgrass prairie is not represented in the National Park Service system. The tallgrass prairie played a large role in the development of America. A portion of the tallgrass prairie should be set aside for the enjoyment and education of all Americans now and for future generations. The best way to ensure the preservation of the tallgrass prairie is by the creation of the Tallgrass Prairie National Preserve.

2. The tallgrass prairie is deteriorating every year. Intensive livestock grazing, aerial application of herbicides, development and other factors are constantly at work on the tallgrass prairie. What is left of the tallgrass prairie is managed for maximum beef production. However, a representative sample of the tallgrass prairie still exists in Osage County. If Congress acts quickly to preserve a portion of the tallgrass prairie, it can be saved. By establishing the Tallgrass Prairie National Preserve, a portion of the tallgrass prairie can be managed to promote the strength, vigor and diversity of the prairie, rather than to promote maximum beef production.

3. The best remaining samples of tallgrass prairie are available for purchase now. Historically, the lands being considered for the Preserve have simply not been for sale. We now have a rare opportunity to purchase the lands. However, the opportunity will not exist forever. We should act while the opportunity exists.

4. Real estate in Osage County is a bargain. Due primarily to several difficult years in the ranching business and the depressed Oklahoma economy in general, the lands for the Tallgrass Prairie National Preserve can be purchased at a low price. Ranch land is selling for less than it has in years. However, the real estate prices are sure to rebound. Congress should take advantage of low real estate prices and act now.

5. Oklahomans are waking up to the economic benefits of tourism. Oklahoma's economy has been based primarily upon energy and agriculture. Our economy is now suffering because of economic down turns in both industries. However, tourism is now our fastest growing industry. We feel that establishment of a Tallgrass Prairie National Preserve will greatly add to the growth of our tourism income.

The Oklahoma Wildlife Federation supports the key elements of the Bill. We support the acquisition of the real estate by purchase rather than by condemnation.

Additionally, we support the mineral rights of the Osage Tribe of Indians. Their right to explore for and produce oil, gas and other minerals should not be impaired. However, the area designated for inclusion in the Tallgrass Prairie Preserve is referred to by some local oil producers as "dry hole country." This area has been heavily explored for oil and contains little production.

We support livestock grazing as a range management tool. We do not want to see the Tallgrass Prairie National Preserve become a federally owned cattle ranch. However, the tallgrass prairie evolved under grazing by wild animals. Livestock grazing should be allowed as an element of the management plan for the tallgrass prairie.

The Oklahoma Wildlife Federation supports management of fish and wildlife in the Tallgrass Prairie National Preserve by authorizing hunting, fishing and trapping where appropriate.

The Oklahoma Wildlife Federation supports the establishment of an advisory committee to assist the National Park Service in managing the Tallgrass Prairie National Preserve. However, we feel that the advisory committee should be advisory only and that the National Park Service should be vested with the responsibility of ultimately making the decisions affecting management of the Preserve.

The Oklahoma Wildlife Federation feels that the tallgrass prairie is a very significant part of our American heritage and should be preserved. We feel that the best way to preserve a significant portion of the tallgrass prairie is by establishing the Tallgrass Prairie National Preserve in Osage County. We respectfully urge this Subcommitte and Congress to approve S. 1967. Thank you.

Senator BUMPERS. Mr. Payne, thank you very much. And to all of our panelists, I appreciate your comments. I will ask a few questions of our panelists and then Senator Boren will as well.

Mr. Williams, you mentioned in your comments that you felt it was timely to move. You were concerned about the fact that while at this time we have willing sellers, the fact that some of those ranches possibly are under pressure. One—I think we've mentioned the Barnard Ranch estate—may be under pressure to move or sell. Time is of the essence. Or possibly that the ranches might break up in the future and be parceled out in small divisions and therefore break up the proposal. Would you care to expand on that?

Mr. WILLIAMS. Yes, sir, Mr. Chairman. I am, indeed, quite concerned about that issue. We have been working this problem for the last 2 years, during which time we have known that those ranches are for sale. We have been told that the Barnard Ranch will be sold. We have been told that the Adams Ranch will be sold. And I had a conversation not too long ago with one of the Adams people who informed me that it was necessary that they sell it, and if they cannot sell these ranches in large properties, it is my belief that they will be broken up and sold in smaller parcels. When that is done, the whole idea of preserving a large piece of tallgrass prairie will be out the window.

The other thing that I think we need to recognize is that the economics are changing in the cattle business in that area. One of the reasons that this has been such a good opportunity for the people of America is that prices have been falling and these ranches have gone on the market. Today the cattle business is recovering. There is, indeed, a commercial demand for ranch land. And I am afraid that this land will be bought out from under us if we don't get this legislation passed very quickly.

Senator NICKLES. Director Mott mentioned the possibility of private ownership. I believe the Nature Conservancy has actually purchased land for this purpose in various places around the country, maybe eventually turning it over to the Park Service. Has there been a discussion of The Nature Conservancy actually purchasing a portion of these areas?

Mr. WILLIAMS. The Nature Conservancy stands ready and willing if asked by the delegation to assist in this effort or if asked by the Park Service to assist. We did have an option on some of these properties that was taken several years ago in the earlier effort. Those options have expired. We have no plans to buy land at the moment, but if asked and if it is economically feasible, we would be very pleased to assist.

Senator NICKLES. If legislative efforts broke down and it appeared that the legislation would not go forward, you could exercise those options and purchase some of these lands. Isn't that correct?

Mr. WILLIAMS. Well, the original options that the conservancy had have expired. So, I don't think that would be viable.

The conservancy would not have the resources that it could dedicate to going out and buying and holding forever in its sanctuary system the entire preserve. What it could do perhaps is to facilitate with an earlier purchase that it could then turn over to a Federal agency or some other entity at a later date.

Senator NICKLES. Mayor Wachtman, you mentioned the fact that you are in the oil and gas business. Are you still in the oil and gas business?

Mr. WACHTMAN. Yes, sir.

Senator NICKLES. You also mentioned your support for the legislation, and the necessity for local control or local inputs. You also mentioned the necessity for oil and gas production and that you've dealt with some public lands in the past around Wooloroc.

Mr. WACHTMAN. Yes, sir, inside the boundaries of Wooloroc Park.

Senator NICKLES. You have looked at this legislation. Do you think it would be compatible to oil and gas exploration within the tallgrass area?

Mr. WACHTMAN. As long as they'll keep the same BIA rules and regulations, I think it will be.

Senator NICKLES. I think you heard not only Senator Boren and myself and Congressman Edwards, but also Director Mott indicate support for that as well.

Mr. WACHTMAN. Yes, sir.

Senator NICKLES. You mentioned the economy of Pawhuska was on the rocks. There is some division in Pawhuska and some division in Osage County. Is the town equally divided on this issue?

Mr. WACHTMAN. I'd say the biggest part of the town is probably behind the park issue for the simple fact of economic development.

Senator NICKLES. Was the city council unanimous or split?

Mr. WACHTMAN. It was unanimous.

Senator NICKLES. How many members are on the council?

Mr. WACHTMAN. There are five.

Senator NICKLES. Did you send us a copy of the resolution supporting the preserve?

Mr. WACHTMAN. Yes, sir, I did.

Senator NICKLES. Thank you very much.

Mr. Holcombe, you headed up the task force. Again, I want to compliment you for the fine work I think that you and other members of the task force have done.

You mentioned that several members of the task force—and I'm going to ask you if that includes yourself—were originally inclined in opposition to the preserve. Could you give us a little insight about what changed your mind?

Mr. HOLCOMBE. Well, Senator, yes. And I, in fact, was opposed to the concept of a prairie preserve.

Senator NICKLES. What about the balance of the commission?

Mr. HOLCOMBE. Probably on balance we were negative. It was degrees. We had one person, a member of the Osage tribal council, that was very much in favor of it. But we all had different ideas of what a national park unit was. I was brought up with the Corps of Engineers condemning our ranch back in the late 1940s. My idea of a Park Service was the Corps of Engineers and their attitude, how they treated people.

Of course, the reason for the task force was to sort out the very many half-truths and rumors that were spread by media and the proponents of the preserve as well as the opponents. We found out that we could acquire land without any condemnation. We found out we could keep grazing on the prairies. Now, you've got to un-

derstand. We've got groups for and against. Some don't understand the management of the prairie, how it has been managed with fire and grazing over the years. We had to explore the economic impact that this might have, how many visitors. The proponents were running 2 million people down the main street of Pawhuska the day the preserve opened. We both know that is not a reality. But there is an economic benefit that can benefit the whole county.

Oil production has been and continues to be a very important part of the legislation. It has to be. I don't think we can reiterate that too often. But we believe that the legislation will protect that.

Senator NICKLES. The majority of the task force was originally somewhat negative. You visited other sites around the country and looked at a couple of other parks I think that some had oil and gas production and so on. After those visits and working on the legislation, was the task force unanimous in their support for it?

Mr. HOLCOMBE. The task force was unanimous after we discovered that we could control the legislation, we could create this park like really probably no other park has been created from the ground up.

The thing that we found as we visited the other parks was there was all this outside group coming in and dictating how we are going to do this. The local people had little say. Yes, we visited with ranchers, a few oil producers, but mostly ranchers, local businessmen, county commissioners, just citizens. And let me say we had the opportunity to visit with people that were for and against the park. But the one thing they kept telling us, I can't believe you're going to have a hand in this before the legislation is done. Whatever you do, just think of everything you can and try to get it in the enabling legislation.

I know the opponents are very wary of the legislation, but it was our finding that legislation is extremely hard to change, and I feel with the political expertise that we have in Osage County, the Osage Indian Tribe, the Cattlemen's Association and local citizens, that we have the ability to ride herd on what legislation we might enact and see that that legislation is kept intact, or if it's changed, it would be an improvement for all.

Senator NICKLES. I appreciate your comments.

Mr. Payne, you mentioned that one suggestion or change would be to make the range management advisory. Right now I think you would have to have concurrence of the range management committee.

Mr. PAYNE. That's correct.

Senator NICKLES. You would like to see that responsibility go to the Park Service. Mr. Holcombe, would you agree with that or disagree?

Mr. HOLCOMBE. Well, our task force didn't agree on everything. And tnis is just one of the many things where we didn't. It is a compromise that we have. It's a compromise on the size. You know, there are some of us that were opting for much less size. There were some that wanted much more. But we are in a compromise and we feel like that we are close enough with the grass management legislation that we certainly can forge a tool. But I don't want to lose the ability to use the expertise of ranchers that have been good stewards and the range scientists that we have available

in our state now to manage this prairie. I don't think the Park Service has anybody on board that is capable of managing the prairie.

Senator NICKLES. I appreciate your comment.

Mr. Payne, did you want to add anything?

Mr. PAYNE. My statement was a reflection of the position of the Oklahoma Wildlife Federation. That is what I'm bound to say.

I want to say that I also served on your task force and was originally opposed to this idea.

Senator NICKLES. Are you opposed to?

Mr. PAYNE. I was opposed to the creation of the tallgrass prairie preserve. In fact, the newspaper asked me a little bit before you set up the task force what I thought about it, and I said I'm against it. And the reporter said why. Then I was on the spot and I had to come up with something. And I said, well, the reason I was against it was because I had always been against it. Our family had always been against it. We had been condemned. We had some similar experience as Mr. Holcombe, and we didn't trust the Federal Government. That was the reason. The answer I gave is and the only thing I could think of is we'll lose our tax base. And he put it on the front page of the paper.

And then when the task force was created, the conservation groups tried to get me off because they felt like that I was put on there to kill this thing. And I was appointed by the Oklahoma Wildlife Federation, but I wasn't given any instruction. I think they appointed me because I was a resident of Pawhuska and one of the few members they had in Pawhuska, frankly.

But my thinking changed. When I saw what this could be, when I saw what it did for other communities and what it could do for our community, but most importantly, what it could do for the tallgrass prairie, to me the advantages far outweigh the disadvantages.

Senator NICKLES. Do you think that changes should require the concurrence of the local advisory board?

Mr. PAYNE. I personally feel that if the Park Service is going to own this land, that they should have the ultimate decisionmaking responsibility. I feel that the advisory board can play a very important role because, as Mr. Holcombe stated, years and years of experience that the ranchers have in managing this land can be used. And I share his concern of the ability of the Park Service to adequately manage this facility.

We haven't talked about it, but some of the universities are also being involved. Oklahoma State University and Kansas State and others are being involved. We feel like a compilation of the universities and of the experienced ranchers that we have in the Osage County area, plus the range management experts can all assist the Park Service. And we feel that is a very valuable resource that the Park Service should have available. But as far as being shackled by the dictates of the advisory committee, that defies the thinking of it being an advisory committee.

Senator NICKLES. I understand.

Senator Boren?

Senator BOREN. Thank you very much, Senator Nickles. I apologize to the panel. I got called to the floor to handle an amendment on on-site inspection of the INF Treaty. We are trying to get it rati-

fied for the President to take to the summit, and so I had to step over there for just a few minutes. And I'm sorry I missed the full testimony of the panel. I will certainly read all of it and study the testimony.

I appreciate the comment that was just made a minute ago by Mr. Holcombe about legislation. I think that is one of the things that is not always understood. I also, as I mentioned in my opening statement, was very skeptical. In fact, the first several times that I discussed this proposal years ago, probably a dozen years ago or more, with people from Osage County, everybody said, well, there's only one position you ought to take on this and oppose this as strongly as possible. And I did for a long, long time. And it had to change a great deal.

I think you said that people have suspicions of the Federal Government. Well, all I can say about that is they're right to have suspicions. And if I were a member of the Osage tribal council, I would have a lot of suspicions as I look back on the history of the way they have been treated. If I were private landowners who had dealt with the Corps of Engineers—and I have a fight with the Corps of Engineers almost every week. I have even threatened to go down and mow people's lawns on Lake Eufaula and have a test case and get arrested myself to get these bureaucrats out of the hair of people who ought to be able to handle their own lands as far as I'm concerned. So, I understand the suspicion. The suspicion is right.

And I think it is very important that we understand that legislation is not our enemy. It is our protection because every time we nail down something in the law, they can't be changed without Congress changing it, not a regulation that a bureaucrat can change or some new head of the Park Service. I think we have a very head of the Park Service right now. I think we have got a good Secretary of the Interior who would agree with us on most of these issues. We don't know how long those people will be there. We might even get some better ones after the next election. No, I won't say that. You never know.

But we can't rely upon who those people will be and whether they think right. And that is the reason we have got to write into the law exactly how the minerals will be handled, how the range management will be handled. And I support the idea of concurrence of the local people because I happen to think that we've got more common sense in Oklahoma about how to operate something. And we want to make this unique. We want this park to be the first partnership.

So, I think it is important. And I appreciate hearing that the city council has spoken in favor of it. I do know from my contacts that the overwhelming majority of Oklahomans have supported it. We have had 200,000 on the petitions. I hope we are able to craft legislation that will take care of these details. Because I have had such a working relationship over a long time with the tribal council, I hope we can craft legislation that will meet their concerns as well, make need what changes we need to make so that we can all be for this and do it in the right way.

And the thing about changing it, if we write these restrictions into the statute, I can tell you—the Oklahoma delegation has said

very bluntly. We have said to some of the groups that want to change it. Some of them want to put condemnation back in. Some of them want to put the Interior Department mineral regulations in there. Some of them want to do away with the powers of the range committee or make it bigger. We have said you do that, you won't have it. We'll kill it. It's a lot harder to pass something than it is to stop it. And under the Senate rules, as you know, just even a couple of people can tie up something with a filibuster for weeks and weeks and weeks. And so, we'd stop it. If we can't get a fair balance out of this bill, we'll stop it. It won't go anywhere. And once this gets legislated, if it does pass and we put these protections in, they are not going to be able to get past the Oklahoma delegation to ever change it—pass a new law to change it. So, getting it done right now is really crucial.

And I appreciate the contributions that have been made by this task force in advising us and from many in the local area who were opponents in the beginning who have been satisfied as we have worked in these protections. So, I want to express my appreciation to all of you.

I know that one of the ideas you've had is a research facility to further our knowledge of how to handle grasslands. Maybe, Mr. Holcombe, you might go into that as to what that would be and how that would operate.

Mr. HOLCOMBE. Well, this is a research facility that would be created—and, in fact, was one of the objectives of preserve—a facility that we would contract with another outside institute. Oklahoma State University is the institute that we would have in mind at first. This might not necessarily come to be. But at this time they have probably a reservoir of young, up and coming range scientists second to none. This is something else that will enhance Oklahoma in the long run. And I envision this being a world-class research facility.

Senator BOREN. I think that is an important part of what we are doing here too. I think we do have the expertise to lead it in Oklahoma. I won't embarrass Mr. Whetsell, but his own study that he has put together of grasses is one of the finest done. He has to be one of the leading experts in the country as far as I'm concerned. And we have the great expertise at OSU and those right in the local area.

Well, I won't take more time, Mr. Chairman, because we have many others to hear from. But I appreciate the comments that have been made.

Thank you very much. And to all of our panelists, we thank you.

Mr. Holcombe, you mentioned one word—and I'm trying to see if anybody else on the panel would talk about it. But you mentioned the use of fire. And a lot of people, particularly people dealing with national parks probably aren't used to the concept or thought of fire as a method. But would you care to——

Mr. HOLCOMBE. Let me create even more fire. [Laughter.]

Yes. We address the management of this prairie with the use of many management vehicles not limited to fire, chemical, brush control in a limited manner. We feel like there has been a deterioration enough that we may in limited instances need the ability to

even use chemicals to help restore the prairie. This is very limited, but that capability needs to be there.

But fire is mother nature's management technique over the years. At different times of the year, the prairie burnt. The buffalo, the elk, the animals that were living on that prairie came to that tender grass and grazed it probably as short as this table right here. And then they moved on to another area. And there was a rest period.

Certainly I am not the one to sit here and act like a range scientist because I'm not. Probably Mr. Whetsell could inform you much more about this. But the fire was the big management tool over the years, for hundreds of years.

Senator NICKLES. I appreciate your mentioning it. To all of our panelists, thank you very much for your participation.

On our next panel we have Ralph Adkisson, member of the Osage Tribal Council; William Ricketts, president, Osage County Cattlemen's Association; Stanlee Ann Mattingly, a member of the Osage Indian Tribe; and Jack Graves who is past president of the Oklahoma independent producers.

Mr. ADKISSON. Mr. Chairman, may I make a request please, sir?

Senator NICKLES. You sure can.

Mr. ADKISSON. One of the panel members, Stanlee Ann Mattingly, is an Osage and she has graciously consented. She would like to yield her time to one of the rancher landowners of Osage County, Mr. Melvin Reed. And with your permission, if that would be all right, Mrs. Mattingly would give him the time instead on the panel.

Senator NICKLES. You can sit there.

Ralph, do you want to be first?

STATEMENT OF RALPH R. ADKISSON, MEMBER, OSAGE TRIBAL COUNCIL

Mr. ADKISSON. All right. I guess that's the most difficult thing for a lawyer to do, to listen for a couple of hours and not be able to object or make a statement of some sort. [Laughter.]

But it's time to flip that coin over.

I would like to do one thing, if I may, also with your permission. This is testimony of another tribal member that I would like to have in the record also, Stephanie Mashunkashey. She is here but she won't testify.[1]

Senator NICKLES. We will be happy to insert it.

Mr. ADKISSON. Let me introduce the chief of the Osage Tribe, George Tall Chief, and the assistant chief, Ed Red Eagle, and the Osage Tribal Council. If they would please stand, I'd appreciate it. [Applause.]

Mr. ADKISSON. In this regard, Senator, let me say this that there has been many rumors in the city of Washington, DC, that the Osage Tribe has signed off on this particular bill. That is not the truth. There have been discussions by aides and/or staff that the council is not unanimous in their position in being in opposition. This council is steadfastly opposed to the location of a prairie pre-

[1] The prepared statement of Ms. Mashunkashey has been retained in subcommittee files.

serve in Osage County. We have had one member of a previous council—and you will note that he is not on the council at this time—who was for the tallgrass prairie for his own reasons. I mention all of these things, again, to clear up any confusion about the position of the Osage Tribe.

And I think we have to look at—you're talking about America and all the plaudits that we've heard. And I love to hear poetry and these type plaudits too. But let's look at people. The Osage Tribe, before they came into Osage County, has ceded back by treaty to the U.S. Government and others over 100 million acres of land. Each time the promise was made this is your land. This is you land. They moved us down into the Osage County when we purchased with our own money the property there in 1883.

Subsequently, the Osages resisted allotment, but finally in 1906 they did allot their land. Our forefathers had the knowledge and the future look to keep the mineral estate in communal ownership. Title to those minerals are held in the name of the United States of America for the benefit of the Osage Tribe of Indians. We thought that meant something. When they came down here into what is now Osage County, one of the chiefs indicated, well, we'll be safe at last. We'll not have any future changes because the white man cannot put that iron thing into the ground. He was referring to the plow and he was talking about the area in northern Oklahoma which you're calling the tallgrass prairie because about eight inches down you're going to run into limestone. I would suggest that the mineral estate consist of oil, gas, coal and other minerals. And there are coal deposits in northern Oklahoma. Senator Bumpers had that question.

I have presented our statement on behalf of the council. It contains 9 or 10 pages. And I've gone into great lengths with what we see as a violation of the trust responsibility of the United States of America. This is a serious breach of trust. The act even on its face is explicit in the violation of the trust responsibility.

For instance, the portion of the act that says in the southern fee unit, there will be a visitor center, et cetera, that would presume that there will be an improvement placed on and over the minerals. That is a taking, though slight taking, of the mineral estate.

Also with regard to this, it is the position of the Osage Tribal Council that in order to detract from this trust which the government has, legally that is the highest degree in law that is protected. President Reagan said that they should use the highest standards to recognize this responsibility. We say we do not want compensation. We're not seeking. We want to stop the preserve. But what you've done in the preserve is say, Osage Tribe, you will not receive compensation. Osage Tribe, we will not provide any vehicle on the taking or the diminishment of your trust property. Osage Tribe, we really don't even need your permission. So, we are back to where we were when we were ceding lands back years and years ago.

Again, let me remind you that the U.S. Justice Department has required the Corps of Engineers in all of their cases to not only acquire the area where the flood waters would be, but also to acquire the mineral interest of the Osage Tribe by their condemnation proceedings in an action of subordination. Now, this area that they are

speaking of was just where the picnic tables and other recreational availabilities would be for the public. What is sauce for the goose is sauce for the gander. If the U.S. Corps of Engineers was required to use their eminent domain proceedings in subordination, then we don't think that it's any different than the National Park Service attempting to use for their primary purpose this area as a preserve and the Osage Tribe being inferior as far as their position in the use of the property. That is one of the legal positions.

I think you will see further as some of our people yesterday even and other trips, when we're looking at the cost of this—and I think Senator Boren was correct. The original estimates was $47 million to $50 million. I think the National Park Service has now lowered it. I think, Senator Nickles, you have made lower estimates since the first of the year.

But let me say this for the Congress to consider either in this bill, if it ever passes, or in the event the courts take jurisdiction of this matter at a later date, there is liable to be an additional $50 to $70 million for the damage to the mineral estate underlying this area. So, just add $50 million or $60 million at a minimum estimate to your cost of this prairie preserve.

I think another matter that needs to be considered here is the fact that our Osage people are trying to get money for optometrists, their equipment. If you wanted dental work done, you make an appointment. It's over a year before you get that appointment. All of these moneys are tied up. Budget cuts, budget cuts, no funding. And then to send a message to the people who the U.S. Government owes a trust responsibility, well, that may be, but we do have $50 million or we will have some money in the future to do this.

The prairie is not going anywhere. My folks came from the Foraker area and I was raised in Pawhuska. And that land is still there and those cattle owners have done a good job on it. There is no danger of someone getting into a commercial activity to making little ranchettes. The land is safe with the present caretakers.

I would like to say with regard to this, those costs are out of proportion with the real needs and what we would hope our representative government would provide for Indian people. We're not talking of the lofty plaudits that have been stated here. We are talking about people and Osage people as well. The Cherokees had the Trail of Tears; the Osages had the Trail of Fears because every time they located somewhere, they were forced to remove. When you look at a map of Osage County right now and you see the 83,000 acres of water projects, you see the annexations of Bartlesville, of Tulsa. You see the community growth, which is fine. It has to happen, and the Osages can't stop it. It does reduce the mineral estate. So, eventually the 1,470,000 acres which we purchased is slowly being taken away. We will end up down with a zero.

And it was said about the National Park Service regulations shall not apply. Well, that's an easy thing to handle. Just run the same restrictive regulations down through the BIA. And it does happen. We have to constantly keep track of what kind of regulations come out of the BIA right now. And I'm sure there are others on this panel that will address the matters that the oil people face with the Environmental Protection Agency as well as the BIA.

So, in closing, I do want to make one other request, if I might. This bill and the preserve involves the trust estate of the Osage Indian Tribe. It involves Indian people. They own 11,000 acres within the preserve area—restricted land. We have a provision in your bill that involves sovereignty. It says that there shall be concurrent criminal jurisdiction in the preserve area with the State of Oklahoma and the Federal Government. I have been coming up here for a number of years on legislation, and anything that affects Indians usually is taken up by the Senate Select Committee on Indian Affairs. And I would respectfully request that that committee have some jurisdiction in the determinations because of all of the Indian factors that are involved and because that we have some vital issues here.

And if you Senators are right—and you may be well intended today, but some day or other you may not be sitting in those chairs. The Park Service, in order to get the thing—they may not be sitting in those chairs. And as Secretary Hodel said, if the preserve is created, within 5 years thereafter, probably all economic activity would stop. So, this is a statement that he made in the Daily Oklahoman in 1985. And I'll read the full text of it. It is also included in my written statement as to what Secretary Hodel said.

So, I will conclude my portion. Thank you for the time, but I implore you because of the uniqueness of Osage County and the communal ownership of these minerals, this goes to the lifeblood of our people, education, health. The money that they get, if they had a full share of that income, is below poverty level right now. Please pay attention to the Osage Indians and do a good job and show us that we have a representative government.

Thank you.

[The prepared statement of Mr. Adkisson follows:]

SENATE SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS -Senate Bill 1967

Statement of **RALPH R. ADKISSON**, Member of Osage Tribal Council on behalf of the Osage Tribal Council and in opposition to S. 1967:

Mr. Chairman and Members of the Committee:

The undersigned is a member of the Osage Tribal Council and a practicing attorney in Tulsa, Oklahoma, and is the designated spokesman for the Osage Tribal Council, the governing body of the Osage Tribe of Indians.

In order to understand the Osage Tribal Council's reasons for being opposed to the creation of a Prairie Preserve in Osage County, Oklahoma, as is proposed by the above-numbered Bill, it might be helpful to understand a bit of the history and background surrounding the area and the Osage Tribe.

The Osage Tribe of Indians purchased with their own funds what is now called Osage County, Oklahoma. Said purchase was made from the Cherokee Tribe of Indians on the 14th day of June, 1883, and included 1,470,370 acres. The deed conveyed the Osage Reservation to the United States of America in trust for the use and benefit of the Osage Indians. Subsequently, the Act of June 28, 1906, Chapter 3573, §2, 34 Stat. 539, allotted the surface of the land, reserved all of the minerals including oil, gas and coal for the period of 25 years. There were many extensions thereafter and the latest extension continues "in perpetuity" by Act of October 21, 1978, 92 Stat. 1660. Title to the mineral estate is held in the name of the United States of America for the use and benefit of the Osage Tribe of Indians. The Osage Indians are very fortunate that the property they purchased is rich in natural resources. The income from the oil and gas development is the major source of income to the Osage Tribe and its people are dependent upon this income. Presently, with the decline in the oil industry, the income is below the poverty level. In many cases, it is the sole income for the Indian family and does provide money for health, medicine, housing and education. It is most vital that this mineral estate not be disturbed in any way. Certainly, our trustee, the United States

of America, should not gamble with this trust property as it has a supreme duty to protect the trust property. As stated by President Ronald Reagan in his American Indian Policy, referring to trust responsibility, "The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards." Law requires that the trustee cannot impair, harm, diminish, or put in jeopardy any part of the trust estate.

1. S. 1967 violates the trust responsibility to the Osage Indians. Of course, the United States Congress can add to or delete the trust or any part thereof. Legally, the only other manner in which the mineral estate can be taken is by eminent domain proceedings, of which the mineral estate could be condemned for (1) title or (2) subordination. Either procedure would legally present to the Tribe the right to the fair market value of the mineral estate so taken. Reference is made to S. 1967, §6(b)(3), which provides for a "visitor's center located in the southern fee unit". This is cited to make the following point. It is clear by this section that the visitor's center will be placed over and above the said mineral estate and is in effect a taking of a small portion of the mineral estate and the Osage Tribe is not afforded the opportunity to establish the fair market value of the minerals. Additionally, it was contemplated that there would be a parking center, animal habitat, etc. on the Preserve areas. Again, this would necessitate a taking of which no remedy is provided for the Tribe to seek compensation for the diminishment and harm to the mineral estate. It is the position of the Osage Tribal Council, who are also trustees of this mineral estate for the future generations of Osage Indians, that the entire area sought to be included in the Tall Grass Prairie Preserve is in fact a "subordination" of the mineral estate.

Reference is made to the 83,000 acres taken by eminent domain proceedings by the United States Corps of Engineers for lake projects in Osage County. The United States Justice Department chose not to take title to the minerals, but rather used "subordination" and the Court proceedings afforded the Osage Tribe a right to establish damage and fair market value of

minerals. The United States Justice Department required that the United States Corps of Engineers "subordinate" the public use areas, that is, the areas that surround the lake impoundment waters, and on which are placed picnic tables, swings and other recreational availabilities. The purposes of the Osage Tribe in developing its mineral estate was subordinated to the designated uses of the Corps of Engineers. The same issue is present in the creation of a Preserve.

Proponents for the Preserve have argued that only willing sellers will be involved in the Preserve. It is the considered position of the Osage Tribal Council that they are not a "willing seller", that they could not give any part of this trust away if they so desired. Since the Tribe is not a "willing seller", then the vehicles of eminent domain proceedings would have to be included in S. 1967 in order to take or diminish any part of the mineral trust estate. The fact that the Osage Tribe is opposing the Preserve and is not a "willing seller" destroys the creation of a Preserve which the Congress has heretofore declared by law "must be willing sellers".

2. The operation of the mineral estate is, has, and will be detrimentally affected by the creation of the Preserve in Osage County. The Osage Tribal Council has been advised by the independent operators, and we are certainly in a position to know the feelings of our oil and gas operators, that they would not purchase leases in the Preserve area or in the "donut hole" in the center of the purported Prairie Preserve.

The mineral estate of the Osage Tribe has been affected to date by reason that the discussion of the Preserve started some 2-1/2 years ago and the boundaries were not ascertained, only the general area. Our oil and gas lessees would not purchase leases in the areas which were discussed as possible Preserve areas and thus, the Osage Tribe has lost the bonus that may have been received in the purchase of leases.

The practical effect of creating the Preserve would be the simple fact that the operators have not purchased and will not purchase the leases. There is proof in what they have told us

because in the matters as discussed above in the lake areas and the taking by the United States Corps of Engineers, the lessees also said they would not purchase leases in the public use areas of which the Osage owns the title to the minerals. The operators have the right to buy leases and attempt to extract the oil and gas, but have wholly failed to purchase leases in the areas and in particular, the public use areas surrounding the 83,000 plus acres involved.

In the proposed Preserve, the core and easement area have produced approximately 5 million barrels of oil. If you would include the "donut hole" in the center thereof, there was an additional 15 million barrels of oil extracted, for a total of 20 million barrels.

The Osage Tribe has acquired earth SAT services for televised target areas in the Preserve areas and have found some 52 prospects. Additionally, we previously had a seismic contract that has developed certain information that is extremely encouraging and all of this data will be for naught if the oil and gas operators choose not to purchase the leases and develop same.

The average production in Osage County is approximately 2-1/2 to 3 barrels per day. These are not prolific wells and perhaps if the wells were producing 100 barrels of oil per day, the operators would certainly purchase the leases. Of course, the price of oil would have a bearing, but at least if they had a more prolific well, it would be more attractive to go in to the areas. Most of the operators in the Osage are independent operators and not the major oil companies. Many have said they will drill in other areas. The geologists and petroleum engineers have told us that there exist excellent prospects in the Preserve areas.

S. 1967 controls the water. This is a serious problem as in the development of their lease, operators have to have water and some have estimated it may cost several thousand dollars per day if they do not have the access to available water in the Preserve area for the development of their leases. The operators are

concerned with the hazards that they might face in liability for injury of any individual or "visitor" in the Preserve area and the cost of insurance for that liability hazard. They are concerned with ingress or egress as and to their leases, not only that they now have but it is also one of the reasons for their reluctance to buy a lease in the future.

While the proposed Bill attempts to see that the mineral interest is not affected and that the Osage is "protected", **the protection language in the Act is useless and has no protection if the oil and gas producers do not buy leases in the area and develop them.** Whether or not their fears are real or imagined, the outcome of their feelings affects the mineral estate and the royalty income to the Osage Tribe of Indians.

The proponents for the Preserve and S. 1967 argue that the Bureau of Indian Affairs Regulations will apply and that is the same condition as exists today and therefore, they do not have to acquire the mineral interests of the Tribe, pay compensation to the Tribe or even have the permission of the Osage Tribe to move in and place this Preserve over and above the mineral estate of the Osage Indians. S. 1967 even provides that the National Park Service Regulations applicable to oil and gas activities shall not apply within the Preserve. The attempt for protection is appreciated; however, regulations must be published and produced in the Federal Register as and to this Preserve Act and certainly, regulatory or restrictive provisions could be included in said regulations. While the new regulations would not be through the National Park Service, they certainly could be sent through the Bureau of Indian Affairs and accomplish the same restrictions. Also, while there may be good intentions by some at this time, future amendments to S. 1967, if passed, could be made enlarging or restricting, etc. the Preserve area.

It should be noted at this point that the center area, or as has been referred to as the "donut hole", has approximately 382 wells and contains 67 square miles of land. A fair look at the map would indicate that this might be the next area which those in favor of the Preserve would like to add. There is precedent

for this as there was a "donut hole" in Big Cypress for agricultural purposes which subsequently was taken over by the Park Service and is owned by the Park Service, notwithstanding it was reserved for agricultural purposes.

The matter of ingress and egress as and to the leases involved in that area is another problem that S. 1967 does not attempt to solve. The restricted Indians who cannot sell their lands without the approval of the Secretary of the Interior and are being forced to live within this center area do not know what ingress and egress they will have.

Also, there is the problem of existing federal law and its impact on the provisions of S. 1967. The Congress of the United States has enacted laws on Preserves. This could very probably be the subject of a court determination on many issues.

It should be remembered that while an individual may purchase land in Osage County and develop it as he sees fit and the Osage oil and gas lessees must drill in accordance with the Bureau of Indian Affairs' Regulations, that this is not the case in the purported creation of a Preserve as the United States of America is the party that is seeking to establish the improvements without the permission, condemnation, compensation or otherwise, for the Osage Tribe. The United States Government is not an individual, and in fact, by reason of the trust responsibilities as cited above, they cannot legally be in the same position as an individual and therefore, any action taken to lessen, diminish, harm, or otherwise injure the mineral estate is prohibited.

Additionally, with regard to the creation of the Preserve, words of the Secretary of the Interior, Donald Hodel, who is quoted in the Daily Oklahoman, Friday, December 6, 1985, about the proposesd Tall Grass Prairie Preserve, stated: "...If legislation says grazing and drilling is permitted, as soon as the park is created, there will be an enormous push to prevent it by banning it outright or raising so much red tape that it could become impossible. Like night follows day, it's an unwaivering principle of park development. There's a constituency that would

oppose any development. Within five years, anyone carrying on commercial activity in the park would find it difficult if not impossible to operate." (underlining ours)

Also, as an additional item, as it presently works in Osage County, in the event a land owner tries to prevent the oil and gas lessee from coming onto his property, the United States Justice Department would represent the Tribe and in a matter of hours, the lessee would be placed on his lease. In the event of changes in the ownership of the land as is contemplated in S. 1967, the Osage Tribal Council would have to employ attorneys to attempt to put the lessee on the lease as the United States Justice Department would represent the National Park Service and not the Osage Tribe of Indians. This has been the precedent in all of the cases that the Osage Tribe has had with the United States Corps of Engineers, and the Osage was required to employ their own attorneys while the U.S. Justice Department represented the Corps of Engineers. Additionally, in the event the Osage did employ attorneys and presented their case, there is a uniformity of decisions in wilderness and preserve areas where mineral or timber rights have been granted, that the mineral or timber rights are secondary to the primary purpose of the creation of the area, which is to preserve the land in its pristine manner. Thus, not only going to the expense of employing attorneys in certain cases, the Tribe would have a very difficult position to present in order to obtain the remedy of placing the lessee upon his lease.

3. It is essential to understand the costs of this Prairie Preserve and in particular, in these times of record federal debt and deficits and financial times of this country. Please note the Bill is silent as to any costs once the Preserve is authorized. The estimates by the elected officials estimate at least $50 million. But referring to the property they are seeking, which is 50,000 acres in fee and 50,000 in easements, I suggest that these are very minimum costs as an earlier proposal was stated at $50 million and eventually, rose to $85 million. Also, no consideration has been made as to the necessity of

acquiring the Tribe's mineral estate in the proposed area. Legally, we feel this is an imperative step even though the Osage Tribe does not want it, but if the Park Service is required by the Congress or subsequently by a Court to acquire the Tribal mineral interest in the area, then there will be an additional $50 million at a minimal estimate. **Thus, you can see that we are speaking of over $100 million for the location of the Preserve.** Our elected delegation is seeking to purchase essentially areas from three ranch owners in Osage County, and a computation of the money cost and the benefits to those owners is apparent. There will be ongoing pressure by the Nature Conservancy, the Audubon and Sierra Clubs to constantly stop economic activity. They are powerful lobbying groups. The loss to schools, roads, etc. by reason of the removal from the tax rolls is a serious concern. The loss of gross production taxes on oil will be a detriment to Osage County as well as to the State of Oklahoma. From the Osage Tribal Council's viewpoint, the funding for Indian health, housing and other programs are being significantly underfunded. The expenditure as costs for the proposed Preserve, if authorized and which costs are unknown to the Congress, is a bitter message to a proud minority Indian Tribe.

CONCLUSION

The Osage Tribal Council has presented valid, legal and practical reasons why S. 1967 should not be approved by this Subcommittee. Because of the uniqueness of Osage County, to-wit, the communal ownership of the minerals by the Osage Tribe of Indians and title held in the United States of America as Trustee, this is not a fit and proper place for the location of a Prairie Preserve. The proponents would have you believe that this Bill is a "Christmas Tree Bill" and does everything for everyone. They want the oil and gas people to be content that they can proceed as business as usual. They want the people, and in particular the restricted Indians living within the center area, to believe that they will have no difficulties of ingress or egress. That there will be no restrictions or any enlargement of the Preserve Area in the future will not happen. That the

three ranchers from whom they are making their purchase will continue on with lease-back grazing privileges and business as usual. That there will be no restrictions or regulations in the area. This is a disservice to the United States Congress, who has the responsibility and duty to see that their investment is protected. This Bill does further a disservice to the American taxpayer by expending monies for the purposes set out in S. 1967. The future financial loss to schools, the future loss of gross production tax which the Osage and independent producers pay the State of Oklahoma, the future bureauacracy which would be introduced in Osage County by the creation of the range management plan and management committee, as well as an advisory committee for the general operation of the Preserve as provided by S. 1967, will no doubt cause conflict in the area and produce more restrictive impositions on the people involved. This Preserve is not essential to the United States or the present or future generations. In the event, this Subcommittee approves the authorization of the Preserve, a valuable principle and asset will be lost to the Osage Tribe.

The Osage Tribal Council, the governing body of the Osage Tribe as established by the United States Congress in 1906, and as affirmed by the United States Supreme Court, requests that this Committee uphold the high standards of the trust relationship with the Osage Tribe of Indians and disapprove S. 1967 and prohibit the location of a Preserve in Osage County, Oklahoma.

Respectfully submitted,

Ralph R. Adkisson

Ralph R. Adkisson,
Designated Spokesman and Member
Osage Tribal Council

Senator BOREN. Mr. Adkisson, thank you very much.

Next we have Mr. Jack Graves, representing the Oklahoma independent petroleum producers.

STATEMENT OF J.M. GRAVES, PAST PRESIDENT, OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION

Mr. GRAVES. Good morning, Senator Nickles, Senator Boren. As usual, it is a pleasure to see both of you.

I am Jack Graves. I'm past president of the Oklahoma Independent Petroleum Association and coordinator elect of the Energy Advocates, a volunteer speaking group that works to bring about public awareness of the necessity of a strong domestic petroleum industry. I am president of Calumet Oil Co. We own and operate almost 500 wells in the Osage County. My working experience in Osage County began in 1952. And incidentally, none of my wells are in this proposed area as it now stands.

We are vitally interested in the economics and the quality of life in Osage County because of our many employees who live there. We are also vitally interested in the tallgrass. I have probably spent more money protecting groundwater and tallgrass than anyone in this room, which I'm sure some will appreciate. We have many friends among the ranchers and we've had a good relationship. And generally we have a good reputation for protecting the prairie.

Senator Nickles, I want to emphasize that in the event a tallgrass preserve is established, the economic and mineral interests of the Osages and their oil and gas lessees are not protected. The oil and gas lessees are concerned that at best the very presence of the Park Service and an estimated 80 cars an hour, if we believe their figures, will cause a general lack of interest in future drilling and exploration, and there will be a gradual encroachment of authority and dimensions of the preserve. With little or no interest in exploration, the Osages will have fewer leases sold, which means fewer and fewer wells drilled, which means less and less oil and gas produced.

In this sector of the county, there was over 50 years of oil development from the discovery of the first important oil field to the most recent important discovery. I can't tell you how much oil and gas is left in the area, nor do I know anyone who can tell you there isn't any left. But another 50 years is needed to find out.

In reviewing this legislation, I noticed an omission that could eliminate drilling or at least cause it to be very costly. In the core areas, the park superintendent could disallow water usage. This would require trucking water from afar at a considerable expense. As it is now, most private landowners will sell water except in extreme drought conditions. The designation of water sources, as well as the designation of routes of ingress and egress, should be under the jurisdiction of the Osage agency.

Senator Nickles, you will recall the very important visit with President Reagan on tax reform. And you are looking at an injured tax paying businessman right now. We compared the stripper wells with the bluestem grass. One well or one stalk of grass isn't much, but collectively all the bluestem and all the stripper wells contrib-

ute handsomely to the area's economy. From the inception of the preserve idea, I have tried to tell myself that it can't be that bad for oil and gas.

I have waded through statements about the area being dry hole country, poor oil and gas production, the need to protect it from low cost housing, the golden arches of McDonald's, and of course it must not be plowed. Incidentally, I have a plow in my garage that was picked up somewhere up on the tallgrass prairie years ago when some Osage first tried to plow it. And I might add that it was bent very badly. [Laughter.]

We also hear there must be a preserve for the public to go see. They have been led to believe it is off limits now by the petitioners passing out these petitions. Most of us who actually work in the area know the highest agricultural usage is grazing. With rare exceptions, it isn't suited for cultivation or plowing. We also know Pawhuska is not likely to develop into a megatropolis extending 15 miles to the west and 30 miles to the north, as some have suggested. And we know that the Tulsa ranchettes are 50 miles away. We know there is good oil and gas production, as well as poor production. But if this area is made inaccessible because of litigation, high cost of compliance, regulations or bureaucracy and is forever removed from private ownership, then the Osages and their lessees will have been effectively denied the benefit of the Osage mineral trust. And that, Senator, is not a proper event to allow to happen.

Incidentally, about 10 years ago as a result of a lawsuit with Chapman-Barnard, the Justice Department authorized an environmental assessment on Osage County because no impact statements had been filed. The study showed that after 75 years of oil and gas production, only 4 percent of the total land in Osage County had even been affected, not damaged or destroyed, but only 4 percent had been affected by oil and gas operations, a bargain, sir, for 75 years of jobs, livelihood, income and taxes.

Now, we all understand that if the minerals went with the land, there would not likely be as many willing sellers or willing buyers for this because the price would be much higher and most landowners try to keep at least part of any mineral rights as a hedge against the future. Senator, as you know, up until now, the independent companies have been concerned mostly with potential problems if a prairie preserve would be established. However, two separate events of the past week have changed and have shown what can happen that strikes fear in the ranks of the independent oil and gas companies. And I wish park Director Mott were here to listen to this.

On May 22, the Associated Press ran an article about the Wilderness Society, the Sierra Club and others filing suit which required Shell Western Energy to abandon preliminary seismic work in the Big Cypress National Preserve. The article reports the company will probably continue to apply for rights to explore for oil north of the preserve on private land that will eventually become part of the preserve under legislation signed by President Reagan last month. Until the Government actually buys the land, the National Park Service can't regulate oil companies wanting to explore there. But representatives of the Sierra Club say they will fight to keep Shell from exploring in the expansion area too.

Please notice what happened here. A company has been kicked out of the preserve, not a park, but a preserve. The company wants to explore on lands that will become part of the preserve, but the Sierra Club says they will fight that also. Over and over we have been told that this proposal is for a preserve, not a park. It is obvious that once the land becomes government property, either park or preserve, the Sierra Club or anyone can litigate to have exploration or production stopped on the grounds that the sensitive environment is being damaged. And the oil and gas lessee would become the private defendant.

The cost of legal defense could be staggering, as I learned several years ago when the Justice Department on this Chapman-Barnard suit flatly told us they will not cocounsel, represent or defend the oil and gas lessee. Simply put, with government ownership of the surface comes the right for environmental groups to sue the Osages, the Government and the oil and gas lessees. And the lessee pays the cost of his own defense. The fact that the Government would own the surface would make it hazardous or undesirable for a mineral lessee to explore for or produce oil or gas in the core areas and probably the easement areas as well. The independents can look forward to years of expensive litigation.

This development certainly adds new meaning to Secretary Hodel's admonition that Mr. Adkisson made reference to that there would be no oil and gas production left five years after the establishment of a preserve. And once we get into the courthouse, all the kings, Congress and men could not extricate us again.

It is entirely possible that 25 CFR could be changed without the Osages' permission.

Now, in addition to this new development, it was reported Friday the Sierra Club will push for another 20,000 acres which would further reduce the Osage mineral reserve. Mr. Chairman, the preserve proposal has taken on a life of its own. Regardless of how constructive it may have appeared in the beginning, it is obvious to the independents that the proposed tallgrass prairie, if it becomes a reality, there will be severe economic loss to the Osage Tribe and the independent oil and gas lessees. Regardless of legislation, the proponents will find a way to run us out of this preserve once it is established. And you know, Federal judges love to write new law.

This certainly wasn't what Congress or the Osages had in mind when they purchased this land and were forced from their homes in Kansas. It certainly wasn't what the independent producers had in mind when they invested years and years, millions of dollars in geology, money and equipment in this area.

Senator Nickles, if the preserve is established, we see no way for the Osages and the independent companies to be protected.

I want to mention South Dog Creek. And as I told you, I have no wells in this area whatsoever. But now, in this central area, which is not being considered at this time, but lies between the two core areas, is just a whale of a lot of production which has produced around 15 million barrels of oil and still has another 5 million or 10 million barrels of secondary and tertiary oil. Now, what is going to happen with the Chapman estate decides they want to sell that land. And as Bill Bell has said, it will be for sale within 10 years or less.

I don't think any of us would be naive enough to think that the park department and the environmentalists will not want that particular piece of land whether it be bought or deeded, granted or whatever. And that is what frightens us more than anything. It's what are they going to do and how are they going to continue this when there are large parcels of land that are right in the middle of what they would like to do best.

Senator NICKLES. Mr. Graves, can I come back to you in the interest of time? I want to make sure I get to our last two panels as well.

Mr. GRAVES. Yes, sir.

[The prepared statement of Mr. Graves follows:]

BEFORE THE

SENATE ENERGY SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORRESTS

THE HONORABLE DON NICKLES, CHAIRMAN

COMMENTS OF:

MR. J. M. "JACK" GRAVES

INDEPENDENT OIL AND GAS PRODUCER

RE:

PROPOSED TALLGRASS PRAIRIE PRESERVE
OSAGE COUNTY, OKLAHOMA

MAY 26, 1988
WASHINGTON, D.C.

GOOD MORNING SENATOR NICKLES.

MY NAME IS JACK GRAVES. I AM A PAST PRESIDENT OF THE OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION AND COORDINATOR-ELECT OF THE ENERGY ADVOCATES - A VOLUNTEER SPEAKING GROUP THAT WORKS TO BRING ABOUT PUBLIC AWARENESS OF THE NECESSITY OF A STRONG DOMESTIC PETROLEUM INDUSTRY. MY COMPANY IS CALUMET OIL COMPANY. WE OWN AND OPERATE OVER 400 WELLS IN OSAGE COUNTY. MY WORKING EXPERIENCE IN OSAGE COUNTY BEGAN IN 1952 AND HAS CONTINUED ON A DAY BY DAY BASIS. WE PROVIDE JOBS FOR ABOUT 85 PEOPLE OF WHOM 75 LIVE IN OSAGE COUNTY. WE GENERALLY ENJOY A GOOD REPUTATION WITH OUR MANY RANCHER FRIENDS FOR PROTECTING THE ENVIRONMENT, AND WE ARE KEENLY INTERESTED IN THE QUALITY OF LIFE AND ECONOMY OF OSAGE COUNTY. TODAY I REPRESENT OIL AND GAS PRODUCERS WHO FEEL THEY WILL BE SERIOUSLY AFFECTED BY THE PROPOSED TALLGRASS PRESERVE. WE THANK YOU FOR THIS HEARING AND FOR HOW YOU HAVE HELPED THE INDEPENDENTS IN THE PAST.

SENATOR NICKLES, I WANT TO EMPHASIZE THAT IN THE EVENT A TALLGRASS PRESERVE IS ESTABLISHED, AS PRESENTLY PROPOSED, THE ECONOMIC AND MINERAL INTERESTS OF THE OSAGES AND THEIR OIL AND GAS LESSEES ARE NOT PROTECTED. THE OIL AND GAS LESSEES ARE CONCERNED THAT AT BEST THE VERY PRESENCE OF THE PARK SERVICE WILL CAUSE A GENERAL LACK OF INTEREST IN FUTURE DRILLING AND EXPLORATION AND THERE WILL BE A GRADUAL ENCROACHMENT OF AUTHORITY AND DIMINSIONS OF THE PRESERVE. IF A COMPANY HAS TWO EQUAL EXPLORATION PROSPECTS - ONE IN THE PRESERVE AREA AND ONE OUT OF THE PRESERVE AREA, OR IN ANOTHER COUNTY, IT IS OBVIOUS THAT THE OUT OF AREA PROSPECT WILL BE CHOSEN AND THE PROSPECT IN THE PRESERVE AREA WILL BE DISCARDED. WITH LITTLE OR NO INTEREST IN EXPLORATION, THE OSAGES WILL HAVE FEWER LEASES SOLD AND THERE WILL BE FEWER AND FEWER WELLS DRILLED - WHICH MEANS LESS AND LESS OIL AND GAS PRODUCED. I NEED TO SAY A WORD ABOUT TIMING ALSO. IN THIS SECTOR OF THE COUNTY, THERE WAS OVER 50 YEARS OF OIL DEVELOPMENT FROM THE DISCOVERY OF THE FIRST IMPORTANT OIL FIELD TO THE MOST RECENT IMPORTANT DISCOVERY, AND ALL IN THE AREA DESCRIBED BY SOME AS DRY HOLE COUNTRY. SENATOR, ABOUT ALL A DRY HOLE TELLS YOU IS THERE IS A HOLE 7-7/8" IN DIAMETER THAT HAS NO OIL OR GAS IN IT. I CAN'T TELL YOU HOW MUCH OIL AND GAS IS LEFT, IN THE AREA, NOR DO I KNOW ANYONE WHO CAN TELL YOU THERE ISN'T ANY LEFT, BUT ANOTHER FIFTY YEARS IS NEEDED TO FIND OUT.

IN REVIEWING THIS LEGISLATION, I NOTICED IMMEDIATELY AN OMISSION THAT COULD EFFECTIVELY ELIMINATE DRILLING OR AT LEAST CAUSE IT TO BE EXCESSIVELY COSTLY. IN THE CORE AREAS, THE PARK SUPERINTENDENT COULD

ELECT NOT TO ALLOW WATER USEAGE FROM TANKS AND PONDS FOR VARIOUS REASONS. THIS WOULD REQUIRE TRUCKING WATER FROM AFAR AT A CONSIDERABLE EXPENSE OF SEVERAL THOUSANDS OF DOLLARS. AS IT IS NOW, MOST PRIVATE LANDOWNERS WILL SELL WATER EXCEPT IN EXTREME DROUGHT CONDITIONS. THE DESIGNATION OF WATER SOURCES SHOULD BE UNDER THE JURISDICTION OF THE OSAGE AGENCY AND TRIBAL COUNCIL TO ASSURE ONE CAN REASONABLY EXPECT TO OBTAIN WATER AT A FAIR COST.

SENATOR, YOU WILL RECALL THE VERY IMPORTANT VISIT WITH PRESIDENT REAGAN YOU ARRANGED REGARDING TAX REFORM. WE COMPARED THE STRIPPER WELLS WITH THE BLUESTEM GRASS - ONE WELL OR ONE STALK OF GRASS ISN'T MUCH, BUT COLLECTIVELY ALL THE BLUESTEM AND ALL THE STRIPPER WELLS CONTRIBUTE HANDSOMELY TO THE AREA'S ECEONOMY. FROM THE INCEPTION OF THE PRESERVE IDEA I HAVE TRIED TO TELL MYSELF THAT IT CAN'T BE THAT BAD FOR OIL AND GAS.

I HAVE WADED THROUGH HALF-TRUTHS ABOUT THE AREA BEING DRY-HOLE COUNTRY, POOR OIL AND GAS PRODUCTION, THE NEED TO PROTECT IT FROM LOW COST HOUSING, THE GOLDEN ARCHES OF MACDONALD'S AND OF COURSE IT MUST NOT BE PLOWED UP. WE ALSO HEAR THERE MUST BE A PRESERVE FOR THE PUBLIC TO GO SEE. THEY HAVE BEEN LED TO BELIEVE IT IS OFF LIMITS NOW. MOST OF US WHO ACTUALLY WORK IN THE AREA KNOW THE HIGHEST AGRICULTURAL USE IS GRAZING. WITH RARE EXCEPTIONS IT ISN'T SUITED FOR CULTIVATION. WE ALSO KNOW PAWHUSKA IS NOT LIKELY TO DEVELOPE INTO A MEGA-TROPOLIS EXTENDING 15 MILES TO THE WEST AND 30 MILES TO THE NORTH AS SOME HAVE SUGGESTED. WE KNOW THERE IS GOOD OIL AND GAS PRODUCTION AS WELL AS POOR PRODUCTION, BUT IF THIS AREA IS MADE INACCESSIBLE BECAUSE OF LITIGATION, HIGH COST OF COMPLIANCE, REGULATIONS, OR BUREAUCRACY, AND IS FOREVER REMOVED FROM PRIVATE OWNERSHIP, THEN THE OSAGES AND THEIR LESSEES WILL HAVE BEEN EFFECTIVELY DENIED THE BENEFIT OF THE OSAGE MINERAL TRUST, AND THAT SENATOR, IS NOT A PROPER EVENT TO ALLOW TO HAPPEN.

INCIDENTLY, ABOUT 10 YEARS AGO, AS A RESULT OF A LAWSUIT WITH CHAPMAN-BARNARD, THE JUSTICE DEPARTMENT AUTHORIZED AN ENVIRONMENTAL ASSESSMENT ON OSAGE COUNTY BECAUSE NO IMPACT STATEMENTS HAD BEEN FILED. THE STUDY SHOWED THAT AFTER 75 YEARS OF OIL AND GAS PRODUCTION, ONLY 4% OF THE TOTAL LAND IN OSAGE COUNTY HAD EVEN BEEN AFFECTED BY OIL AND GAS OPERATIONS. A BARGAIN SIR, FOR 75 YEARS OF JOBS, LIVELIHOOD, INCOME AND TAXES.

NOW WE ALL UNDERSTAND THAT IF THE MINERALS WENT WITH THE LAND, THERE WOULD NOT LIKELY BE AS MANY WILLING SELLERS OR WILLING BUYERS BECAUSE THE PRICE WOULD BE MUCH HIGHER AND MOST LANDOWNERS TRY TO KEEP AT LEAST PART OF ANY MINERAL RIGHTS AS A HEDGE AGAINST THE FUTURE. SENATOR, AS YOU KNOW, UP UNTIL NOW, THE INDEPENDENT OIL AND GAS COMPANIES HAVE MOSTLY BEEN CONCERNED WITH POTENTIAL PROBLEMS IF A PRAIRIE PRESERVE WOULD BE ESTABLISHED, HOWEVER, TWO SEPARATE EVENTS OF THE PAST WEEK HAVE CHANGED THAT AND HAVE SHOWN WHAT CAN HAPPEN.

ON MAY 22ND, THE ASSOCIATED PRESS RAN AN ARTICLE ABOUT THE WILDERNESS SOCIETY, THE SIERRA CLUB AND OTHERS FILING SUIT WHICH REQUIRED SHELL WESTERN ENERGY TO ABANDON PRELIMINARY SEISMIC WORK IN THE BIG CYPRESS NATIONAL PRESERVE. THE ARTICLE REPORTS THE COMPANY WILL PROBABLY CONTINUE TO APPLY FOR RIGHTS TO EXPLORE FOR OIL NORTH OF THE PRESERVE ON PRIVATE LAND THAT WILL EVENTUALLY BECOME PART OF THE PRESERVE UNDER LEGISLATION SIGNED BY PRESIDENT REAGAN LAST MONTH. UNTIL THE GOVERNMENT ACTUALLY BUYS THE LAND, THE NATIONAL PARK SERVICE CAN'T REGULATE OIL COMPANIES WANTING TO EXPLORE THERE. BUT REPRESENTATIVES OF THE SIERRA CLUB SAY THEY WILL FIGHT TO KEEP SHELL FROM EXPLORING IN THE EXPANSION AREA TOO.

PLEASE NOTICE WHAT HAS HAPPENED HERE. A COMPANY HAS BEEN KICKED OUT OF THE PRESERVE - NOT A PARK BUT A PRESERVE. THE COMPANY WANTS TO EXPLORE ON LANDS THAT WILL BECOME PART OF THE PRESERVE, BUT THE SIERRA CLUB SAYS THEY WILL FIGHT THAT ALSO. OVER AND OVER WE HAVE BEEN TOLD THE PROPOSAL IS ONLY FOR A PRAIRIE PRESERVE NOT A PARK. IT IS OBVIOUS THAT ONCE THE LAND BECOMES GOVERNMENT PROPERTY, EITHER PARK OR PRESERVE, THE SIERRA CLUB OR ANYONE CAN LITIGATE TO HAVE EXPLORATION OR PRODUCTION STOPPED ON THE GROUNDS THE ENVIRONMENT IS BEING DAMAGED. THE OIL AND GAS LESSEE WOULD BECOME THE PRIVATE DEFENDANT.

THE COST OF LEGAL DEFENSE COULD BE STAGGERING. I LEARNED SEVERAL YEARS AGO THE JUSTICE DEPARTMENT WILL NOT CO-COUNCIL, REPRESENT OR DEFEND THE OIL AND GAS LESSEE. SIMPLY PUT, WITH GOVERNMENT OWNERSHIP OF THE SURFACE COMES THE RIGHT FOR ENVIRONMENTAL GROUPS TO SUE THE OSAGES, THE GOVERNMENT AND THE OIL AND GAS LESSEES - AND THE LESSEE PAYS THE COST OF HIS DEFENSE AND ALLEDGED DAMAGE TO THE ECOLOGY AND ENVIRONMENT. THE FACT THAT GOVERNMENT WOULD OWN THE SURFACE, WOULD

MAKE IT HAZARDOUS AND UNDESIRABLE FOR A MINERAL LESSEE TO EXPLORE FOR, OR PRODUCE OIL OR GAS IN THE CORE AREAS AND PROBABLY THE EASEMENT AREAS AS WELL. THE INDEPENDENTS CAN LOOK FORWARD TO YEARS OF EXPENSIVE LITIGATION. THIS DEVELOPMENT CERTAINLY ADDS NEW MEANING TO SECRETARY HODEL'S STATEMENT THAT THERE WOULD BE NO OIL AND GAS PRODUCTION LEFT WITHIN 5 YEARS OF THE ESTABLISHMENT OF A TALLGRASS PARK. IT IS ENTIRELY POSSIBLE THAT THE PARK SERVICE COULD CAUSE CHANGES IN 25 C.F.R. THROUGH BIA WITHOUT THE APPROVAL OF THE OSAGES. ONCE WE GET TAKEN TO THE COURTHOUSE, ALL THE KINGS, CONGRESS AND MEN COULD NOT EXTRICATE US AGAIN.

IN ADDITION TO THIS NEW DEVELOPMENT, IT WAS REPORTED FRIDAY, THE SIERRA CLUB WILL PUSH FOR AN ADDITIONAL 20,000 ACRES TO FURTHER REDUCE THE OSAGE MINERAL RESERVE.

SENATOR NICKLES, THE PRESERVE PROPOSAL HAS TAKEN ON A LIFE OF ITS OWN. REGARDLESS OF HOW CONSTRUCTIVE IT MAY HAVE APPEARED IN THE BEGINNING, IT IS OBVIOUS TO THE INDEPENDENTS THAT IF THE PROPOSED TALLGRASS PRAIRIE PRESERVE BECOMES A REALITY, THERE WILL BE SEVERE ECONOMIC LOSS TO THE OSAGE TRIBE AND THE INDEPENDENT OIL AND GAS LESSEES. IF THE OSAGES ARE HURT, THE INDEPENDENTS ARE HURT, IF THE INDEPENDENTS ARE HURT, THE OSAGES ARE HURT. IT MAKES NO DIFFERENCE WHO GETS HURT FIRST, WE ALL WILL SUFFER.

THIS CERTAINLY WASN'T WHAT CONGRESS OR THE OSAGES HAD IN MIND WHEN THEY PURCHASED THIS LAND AND WERE FORCED FROM THEIR HOMES IN KANSAS. IT CERTAINLY WASN'T WHAT THE INDEPENDENT PRODUCERS HAD IN MIND WHEN THEY INVESTED YEARS AND YEARS, MILLIONS OF DOLLARS IN GEOLOGY, MONEY AND EQUIPMENT IN THIS AREA.

ALLOW ME TO MAKE AN ANALOGY IF I MAY. DO YOU KNOW HOW TO BOIL A FROG? CERTAINLY YOU DON'T PITCH HIM IN HOT WATER BECAUSE HE WOULD IMMEDIATELY JUMP OUT. WHAT YOU DO IS GENTLY PLACE HIM IN NICE WARM WATER, THEN TURN UP THE HEAT AFTER HE HAS BECOME LETHARGIC - AND PRESTO YOU HAVE A BOILED FROG. THE INDEPENDENT PRODUCERS ARE FEARFUL THAT IF THE PRESERVE IS ESTABLISHED, SOMEONE WILL TURN UP THE HEAT CAUSING HIS OPERATIONS TO BECOME UNPROFITABLE. SENATOR NICKLES, IF THE PRESERVE IS ESTABLISHED WE SEE NO WAY FOR THE OSAGES AND THE INDEPENDENT COMPANIES TO BE PROTECTED.

WE CERTAINLY HOPE YOU FULLY WEIGH THE CONSEQUENCES OF THIS PROPOSAL AND MEASURE THE IMPACT ON THE OSAGE TRIBE AND THE PEOPLE WHO LIVE IN THE AREA AND WHO'S JOBS AND LIVELIHOOD IN THE OIL AND GAS INDUSTRY AND THE RANCHING BUSINESS WOULD BE ADVERSELY AFFECTED FOR THE NEXT 50 YEARS.

THIS TESTIMONY AS WELL AS A MORE COMPLETE DESCRIPTION OF ALL THE ISSUES HAVE BEEN COMPILED FOR THIS COMMITTEE.

THANK YOU FOR YOUR TIME AND INTEREST.

Environmental Groups Fight Florida Drilling

NAPLES, Fla. (AP) — Oil drillers have been told to tear down their equipment and get out of Big Cypress National Preserve after conservation groups protested that exploration would damage the sensitive land.

The preserve covers cypress swamp, hardwood hammocks and grass prairie in southwest Florida adjacent to the Everglades National Park.

The order, issued last week by the U.S. Justice Department, resulted from a suit filed by the Wilderness Society, the Sierra Club and five other environmental groups arguing that the federal government pushed for drilling despite unresolved environmental concerns.

Shell Western Energy and Petroleum, a subsidiary of Shell Oil Co., began exploration this month inside the 570,000-acre preserve by drilling holes for seismic testing.

Shell spokeswoman Mary Dokianos has said the government decision will put 100 employees out of work and $1 million worth of equipment will have to be dismantled.

The company will probably continue to apply for rights to explore for oil north of the preserve on land that will eventually become part of the preserve under legislation signed by President Reagan last month, Dokianos said.

Until the government actually buys the land, the National Park Service can't regulate oil companies wanting to explore there.

But representatives of the Sierra Club say they will fight to keep Shell from exploring in the expansion area too.

TULSA WORLD - MAY 22, 1988

Additional Acres Sought as Debate Nears on Preserve

Sierra Club representatives said Friday they will attempt to persuade congressmen to add another 20,000 acres to the tallgrass prairie preserve proposed for Osage County.

Senate subcommittee hearings on the proposed preserve are scheduled to begin Thursday. Sen. Don Nickles, R-Okla., will chair the hearing before the subcommittee on public lands, national parks and forests.

As proposed, the preserve would encompass about 49,000 acres northwest of Pawhuska, and another 48,000 acres would be set aside as easement.

Brett D. Hulsey, Sierra Club staffer in charge of the tallgrass project, said the club still wants Congress to consider adding another 20,000 acres that are available from willing sellers.

Those additional acres are located on the eastern section of the Barnard Ranch, the western section of the Adams Ranch, and the Codding Ranch.

The existing prairie proposal includes lands on the western part of the Barnard Ranch, the eastern area of the Adams Ranch, and on the Drummond Ranch. All that property also is available from willing sellers.

Hulsey said introducing buffalo and elk onto the preserve would be easier with the addition of the extra acreage.

Even if the other 20,000 acres are added, the tallgrass preserve still would be the smallest preserve in the national park system, Hulsey said.

J. Michael McCloskey, national chairman of the Sierra Club, said it would be preferable to acquire as much acreage as possible at the outset.

"The general history is that you can come back (and acquire more land), but it usually is incredibly more expensive when you try to piecemeal it," he said.

TULSA WORLD MAY 21, 1988

Recognizing that the useful ownership in perpetuity of the Osage Mineral Estate by the Osage Indian Nation through its development by oil and gas lessees is dependent upon the Federal Government's recognition of the lessees economic sensitivity to any increased burdens of administration and any additional costs of regulatory compliance, it is the purpose of this working paper to point out the serious consequences and complexities which will arise in the event a National Tallgrass Prairie Preserve is established upon the Mineral Estate and to bring to mind the potential for serious adverse economic impact to the Tribe and its independent oil and gas lessees through curtailment, if not forced abandonment, of oil and gas activities upon the proposed Preserve lands unless strict safeguards against increased burdens of administration and costs of regulatory compliance are contained in the enabling legislation.

Therefore, in the event a National Tallgrass Prairie Preserve is established in Osage County, Oklahoma, it is necessary that the enabling legislation provide absolute safeguards preserving the right of the Osage Indian Agency to administer the oil and gas operations on their Mineral Estate within the proposed Preserve and scenic easement lands in the exact manner in which it is administered currently, thereby reserving to the Osage Indian Agency and to the Osage Tribal Council continued exclusive jurisdiction and enforcement over oil and gas operations, including but not limited to permitting of wells, well site approval, establishment of routes of ingress and egress open at all times to all activities and vehicular traffic necessary to operations, protection of surface and subsurface fresh water, designation of water sources for drilling and all other operations from impounded water, streams, rivers and underground aquifers, approval of placement of all surface equipment, lead lines, electrical transmission lines, and storage tanks, both temporary and permanent, necessary to drill, complete, produce and service all wells and facilities and to establish secondary and tertiary recovery operations, spill prevention and containment plans, saltwater disposal easements and the method of surface damage settlement, the amount of such damages to be determined by the amount of damages paid for operations on land of

like kind and quality not within the Preserve or the scenic easement and without regard to any enhanced value attributable to park management; Further, that the enabling legislation recognize the current regulations are entirely adequate to protect the environment on the proposed Preserve lands from oil and saltwater pollution and, therefore, the National Park Service be directed to accept sole responsibility for the cost of construction and maintenance of all roads and aesthetic improvements which it may deem necessary to protect visitors from visual blight, and all protective barriers on oil and gas operations which it deems necessary to protect Preserve visitors and their property from possible injury from contact therewith and that any injury to visitors or their property caused by contact with operations that are in compliance with the regulations administered by the Osage Indian Agency shall be the sole responsibility of the National Park Service, which shall indemnify and hold harmless both the Osage Indian Nation and oil and gas operators involved in litigation over any such injury or allegation from any judgment rendered against them and from all costs and attorneys' fees; Further, that any legal fees and other costs incurred by the Osage Indian Agency, Osage Tribal Council and Osage Indian Nation from administration of the Preserve lands or from disputes between them and the National Park Service concerning Preserve lands shall be paid by the National Park Service; and, Finally, since the useful ownership of the Mineral Estate by the Osage Tribe of Indians and the continuation of the proposed Preserve lands as an ongoing source of severance tax revenues for State and County government and the continued employment of dozens of workers now directly or indirectly supported by oil and gas operations on the proposed Preserve lands are all entirely dependent upon the ability of the Tribe's independent oil and gas lessees to operate at a profit in what is already an increasingly adverse, if not hostile, financial and regulatory climate, no regulations concerning oil and gas operations within the proposed Preserve lands and scenic easement lands shall be enacted that render existing or future operations economically unviable and the right shall be granted in the enabling legislation

to both the Osage Indian Nation and its oil and gas lessees to require the National Park Service to exercise its power of eminent domain in the event any regulation does render any property economically unviable and to pay to the Osage Indian Nation and its oil and gas lessees the fair market value of the properties such as they would be were they not burdened by the costs of regulatory compliance required by the National Park Service. In the event of litigation over this issue, the National Park Service shall bear the costs and attorneys' fees of all parties involved.

Senator NICKLES. Our next panelist is William Ricketts, president of the Osage County Cattlemen's Association.

STATEMENT OF WILLIAM B. RICKETTS, PRESIDENT, OSAGE COUNTY CATTLEMEN'S ASSOCIATION

Mr. RICKETTS. Senator Nickles and members of the committee, thank you very much. I want to take the opportunity to thank you for being allowed to appear before today. My name is William B. Ricketts and I appear before you as the representative of the Osage County Cattlemen's Association of which I am the president.

Our association is in opposition to the establishment of the tallgrass prairie national preserve, and each of you have been previously furnished and have before you a copy of the letter from the association which sets out the basis for our opposition. And I would advise you that on this past Saturday, the board of directors and officers of our association met in a special meeting to address these particular matters. And it was a unanimous vote of the directors and the officers that I appear before you to state our opposition to this preserve.

Gentlemen, I know you are becoming familiar with Osage County, but very briefly, let me tell you again that we are the largest county in the State of Oklahoma. We have the largest county cattlemen's association in the State of Oklahoma. And our membership being in excess of 200 members and we, an active association—we meet on a regular basis and each year on Father's Day weekend in June, we hold a 4 day annual convention which we believe to be the largest and most well attended cattlemen's association convention in the State of Oklahoma and I think probably in the southwestern part of the Unite States.

But, gentlemen, the basic concern of our association is the land to be acquired—and we all would agree—is some of the finest tallgrass prairie land in the United States. But it is also some of the finest producing land for cattle and grazing in the United States. And we vitally need this land in production for cattle operations in Osage County.

With all due respect to all the safeguards that have been promised and all the safeguards which we understand are in the legislation, we also understand that this is the national preserve and this land will be owned by our government and will be removed from private ownership and from private production use forever.

The economy of Osage County, as you're becoming familiar, is strictly agricultural, oil and gas. And you've heard from the oil and gas interest here today.

As to agriculture, I again would remind you that I represent an association which has over 200 members who make their living in the production of beef. We represent a large cross section of both large and medium sized and small ranchers in Osage County. And through our board of directors and officers again I emphasize our opposition to this preserve.

I want to thank you for allowing me to appear before you. If there are any questions, I will do my very best to answer them. But if I cannot, I assure you that when I return home, I will answer

any questions, give you the information that you need. Thank you very much, sir.

[The prepared statement of Mr. Ricketts follows:]

beef builds strength

May 21, 1988

Honorable Donald L. Nickles
Honorable David L. Boren
Honorable Mickey Edwards
Honorable James Inhofe

Dear Sirs:

This letter is in reference to the letter from the Osage County Cattlemen's Association dated October 23, 1985 to reconfirm the opposition of establishing a Tall Grass Prairie Preserve in Osage County.

The Officers and Directors voted unanimously May 21, 1988 to have William B. Ricketts, President of the Osage County Cattlemen's Association to be sole representative of Osage County Cattlemen's Association and to reconfirm the Association stand on this issue.

I hope that you will consider the Association point of view on this matter, and if you would like to meet with the Officers and Directors and general membership of the Osage County Cattlemen's Association I would be happy to arrange such meeting.

Sincerely,

William B. Ricketts

William B. Ricketts
President,
Osage County Cattlemen's Association

Officers and Board of Directors:

John Strom, 1st Vice President

Robert Hughes, Director

Lee Briggs, Director

Gary Chambers, Director

Rose Yount, Secretary-Treasurer

Kenneth Pearson, Director

Mack McKinley, Director

Dave Jacques, Director

Osage County Cattlemen's Association

108 E. 7th ● Pawhuska, OK 74056 ● Ph. (918) 287-4170 or 287-3028

beef builds strength

October 23, 1985

Honorable Donald L. Nickles
U. S. Senate
713 Hart, Senate Building
Washington, D.C. 20510

Dear Senator Nickles:

In reply to your recent letter to Osage County residents concerning the establishment of a prairie preserve, I feel it is my duty to express the position of the Osage County Cattlemen's Association. As you know we have not been very vocal on this issue because we have a small percentage of prominate members who favor a prairie preserve. However, the majority of the membership is opposed.

We have voted from the beginning, that we don't want the Federal government buying any Osage ranches. Lee Holcombe was asked by our board of directors to serve as our representative to your task force, and he was instructed to be in opposition. Lee changed his personal views after joining the task force, and he has presented the task force proposal to the membership, the board of directors, and the prairie park committee on numerous occasions. Each time the group has remained firm in their stand to oppose the prairie preserve. The Osage County Cattlemen's Association is not in favor of a Prairie Park and at this point Lee Holcombe would be expressing his own views and not that of the Association.

The Association believes in free enterprize and that the Federal Government owns too much land now. We feel that the private sector is maintaining this prairie better than the park service could and at the same time it is providing a livelihood for the operators. Should these ranches become a park, regardless of what you propose, the cattle and mineral potential of some of the finest and most productive acres in the world would be restricted and would never be available to future generations. From the appraisals prices we hear, there will be a very false and inflated real estate value of land in this county. This would leave little future for young people or the cattle business in Osage County.

We understand the task force proposals, where the money is coming from, and the threat that the government is going to have a Prairie Park regardless, and we should try and make the best deal possible. We feel as citizens, tax payers and voters that this would be a tragic reason, to accept something you feel is not right. We feel if you and others in Washington would cut spending, balance the budget and get a supply and demand economy, then the cattle and energy business will recover in

Osage County Cattlemen's Association
108 E. 7th ● Pawhuska, OK 74056 ● Ph. (918) 287-4170 or 287-3028

Osage County and the area will prosper again from the industries that made it famous. This would be lasting and real and more beneficial than tourists, busloads of school children and park rangers.

I hope that you will reconsider and not introduce any legislation for a park in Osage County. If at anytime you wish to visit with the membership or the board of directors of the association, I would be happy to arrange a meeting.

Sincerely,

Tom Points

Tom Points
President,
Osage County Cattlemen's Assoc.

TP:ry

Senator NICKLES. Mr. Ricketts, thank you very much for your comment.

Stanlee Ann, did you want Mel Reed to make a statement?

Ms. MATTINGLY. Yes.

Senator NICKLES. Mel, please proceed.

Mr. REED. Senator Nickles, I have some testimony.

Senator NICKLES. My staff will pick it up.

Mr. REED. I would also like to call attention to another testimony here from another——

Senator NICKLES. Would you please state your name for the record?

Mr. REED. Sure. I'm Melvin Reed, third generation rancher. I live at Foraker, OK, which is within the boundaries of this proposed preserve. I'm a past president of the Osage County Cattlemen's Association and a Vietnam veteran, which I'm proud of.

I would like to address the committee and enter into the record Mr. Mark Freeman's testimony. He was not able to be here and appear before the committee. But he did want me to bring it along.

[The prepared statement of Mr. Freeman follows:]

May 19, 1988

Honorable Dale Bumpers
Chairman, Public Lands
SD-308 Dirksen Senat Office Bldg.
Washington, D. C. 20510

Dear Mr. Bumpers:

I'm Mark Freeman Jr. My ranch has been in and out of planned boundaries for a tallgrass preserve or park for the last fifteen years.

I oppose the establishment of a Tallgrass Prairie Preserve in Osage County or the Flint Hills of Kansas.

On December 5, 1985 the Osage Preservation Coalition was formed to bring together all those groups and individuals who oppose the establishment of a tallgrass prairie preserve in Osage County. The 31 individuals on our advisory committee represent the Osage Tribe, ranchers, Pawhuska businessmen, taxpayers and other concerned citizens.

The Osage Preservation Coalition evolved out of our inability to get our elected officials and the news and ~~elections~~ electronic media to acknowledge that there was more than token opposition to the proposed preserve. Our purpose was, and still is, to focus the energies of all groups and individuals who oppose the preserve and to call to the attention of our Congressional delegation, and the media, that there is more than considerable opposition to this concept to stop the takeover of this private land by the Park Service and professional environmental groups.

1. Is this tallgrass prairie preserve necessary to preserve a vanishing prairie? The answer is no. Millions of acres have been returned to sod in the last 50 years and no measurable amount of sod has been broken out in that same period of time. Under the most recent Federal Farm Program, it is estimated that some 40 to 50 million acres will be returned to grass in the next 5 to 10 years.
2. Is this area threatened by commercial or residential development? The answer is no. Proponents have voiced fears that the area in question might be broken up into 10 or 15 acre "ranchettes" or some other like development. To one who knows this area, that is utter nonsense. I challenge any knowledgeable individual or group to come to this area, study the physical features and economic base and develop any factual data that will support his claim.
3. Will this tallgrass prairie preserve be a cure for the economic ills that beset this community?

At this time that is a moot question. Our answer is no by the following factual information.

The only economic impact study made showed that the revenue gained would be pretty well offset by the revenue lost.

The only certain economic benefits will be derived by the landowners who hope to sell their land to the Park Service at a price above the present market value.

That money will not end up in the local economy. It will go to non resident landowners or to the lending agencies who hold mortgages on their land.

4. Can we expect visitation numbers from 500,000 to 3,000,000 as has been claimed by many proponents?

This seems to be very unlikely in view of the fact that old established parks like Yellowstone and Yosemite had 2.2 million and 2.8 million visitors respectively in 1985.

In that same year the whole Southwest Region of the Park Service had only 12.5 million visitors. This region included 35 parks in 1985 and the Osage tallgrass prairie preserve would be in this regional group if it is established.

5. Did the desire for the establishment of a tallgrass prairie preserve come from the people of this community as has been stated by the proponents?

The answer is no. The Audubon Society, National Wildlife Federation, Nature Conservancy, Sierra Club, etc., have been working for a tallgrass prairie preserve in this area and the Flint Hills of Kansas for many years. Their lobbying is constant and their funds are considerable and taxfree. In fact, the top seven of these groups have some $125,000,000 annually to spend in lobbying and other areas of their desire. They are formidable opponents. In effect, they are using taxpayers dollars to lobby Congress to spend more taxpayer dollars on their pet projects.

6. Can legislation be written to protect the Osage mineral trust, ranchers, taxpayers, and other landowners in this area?

We believe the answer is no.

As to the safeguards that the proponents maintain have been assured in this legislation I refer you to a statement by Secretary of Interior Donald Hodel in reference to that concept. "Any obstacles to drilling or grazing would depend on the legislation that creates the park. But there is a trap in that. If the legislation says grazing and petroleum production is allowed to continue and even new drilling is permitted, as soon as the park is created, there will be an enormous push to prevent it by banning it outright or raising so much red tape that it could become impossible. Like night follows day, it

is an unwavering principle of park development. There is a constituency that would oppose any development. Within five years anyone carrying on commercial activity in the park would find it difficult if not impossible to operate."

7. At a meeting in Tulsa, Oklahoma, some two years ago, Interior Secretary Hodel asked me the following question, "if a majority of the people in this area do oppose the establishment of the tallgrass prairie preserve, why do your elected officials and the media continue to say and print that only a small dissident group oppose this preserve?"

What he said about the delegation and media was true then, and it seems to still be true today.

The Osage County Democrat Convention was held Saturday, April 9, 1988 at Pawhuska, Oklahoma. The Convention delegates voted a 95 percent majority to pass the County resolution to oppose the creation of the tallgrass prairie preserve in Osage County.

The Republican County Convention held earlier, also passed a similar resolution to oppose the prairie preserve.

Democrats at the First District Convention two weeks later passed a resolution opposing the establishment of a prairie preserve in Osage County.

The Oklahoma Democratic Party met in convention at Oklahoma City, May 14-15 for its State Convention. The Osage County Delegation offered the following resolution as an amendment to a previously offered resolution. It passed easily.

> "Be it further resolved that the Oklahoma Democratic Party joins the Osage County Democrats, the Osage County Cattlemen's Assn., the Osage Indian Tribe, Oil Producers, the Osage Preservation Coalition, and a majority of Osage County landowners in opposing S-1967 and HR-3803 concerning the establishment of the tallgrass prairie preserve in Osage County."

To this date, as far as I know, only one story reporting this statewide event has appeared in the media and that was an article appearing in the local Daily Journal-Capital. (That article accompanies this testimony.)

I believe this is final and overwhelming evidence that information showing a plurality of opposition to this preserve has and still is being suppressed by the media.

One member of our Congressional Delegation who attended this statewide convention was heard to say, after the passage of this resolution, that it did not mean a thing and would not affect his judgment. I can only hope that a majority of our elected representatives do not feel the same way.

In closing, I would say that those of us who oppose the establishment of a tall-

grass prairie preserve in Osage County are not "kooks" as we have been called by some of the proponents. We are productive, tax-paying, voting American citizens who are concerned about the more than 2 trillion dollar National Debt, the annual multi-billion dollar deficits, education, national defense, and the welfare of our people today as well as future generations.

We feel that our elected officials should be concerning themselves with these issues rather than spending their valuable time promoting the establishment of another Park to add to the some 80,000,000 or so acres of land that the Park Service controls today. A Park Service whose Director appears before Congress each year to plead for more funds and more manpower to maintain the Parks they have in place today--who threatens that some of the present installations might have to be closed if he does not get more funding.

Sincerely,

Mark Freeman, Jr.

Enclosure

State Demos pass Preserve opposition amendment

BY NELSON CARTER

The Oklahoma Democrat Party met in Oklahoma City, May 14-15, for it's State Convention.

538 delegates were seated for the convention to take care of Party business, 17 of these delegates along with four alternates will represent Oklahoma Democrats at the National Convention in Atlanta, Georgia.

The delegation is a balance of male and female representatives and meet with affirmative action goals.

State delegates approved 18 resolutions and several amendments during the convention.

How many times have you heard someone say or have said yourself, why bother, one vote won't make any difference or that a small group won't be heard anyway?

A SMALL group of people from Osage County, Congressional District One, were heard, they went about their business quietly and deliberately Friday, prior to the convention and created what became a major issue for the Democrats on the floor of the Convention.

The Osage County Delegation asked Democrats statewide to support their amendment to the Resolution No. 8, which is concerned with Litter, Toxic Waste, Polluters, the Super Fund clean-up programs, natural resources, preservation of the groundwater, soil and air and to restrict the use of toxic chemical and pesticides.

The Osage County delegation asked that "Be it further resolved that the Oklahoma Democratic Party joins the Osage County Democrats,, the Osage County Cattlemen's Association, the Osage Indian Tribe, Oil Producers, the Osage Preservation Coalition, and a majority of Osage County landowners in opposing S-1967 and HR-3803 concerning the establishment of the Tallgrass Prairie Preserve in Osage County."

The Osage County delegates had done their job well and were near being overwhelmed with the response of the state delegates, as State Chairman Bill Bullard called for the standing vote on the amendment, hundreds of delegates rose in say NO to the Prairie Preserve, then Bullard said, "The Chair recognizes the Majority from the floor the amendment has passed," Cheers from the convention floor were deafening at that time.

Stanley Ann Mattingly, an Osage, spearheaded the movement prior to and during the convention and went a step further, gaining an audience with House Speaker Jim Wright of Texas.

Speaker Wright, who will oversee the hearings on the Preserve in Washington, D.C. said, "I will rely on the Oklahoma Delegation (Boren, Edwards, Nickles and Inhofe) to inform me on this issue."

Speaker Wright continued, saying that he would keep an open ear to the concerned voices of the Osage people, during the hearings.

Mattingly informed the Speaker that she would be attending those hearings, slated for the 26th of May.

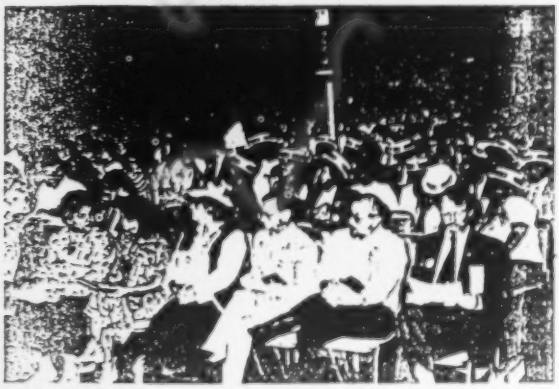
Monday, Mattingly received word from the Public Lands, National Parks subcommittee that in fact she will be allowed to give testimony during the hearings.

Delegate Louis Gray (former J.C Editor), delivered 30 Jackson delegates in opposition to the Preserve and gave a moving speech to the convention, as did Foraker Rancher Melvin Reed and Osage County Chair Bill Supernaw of Shidler, among others. Gray will attend the Democratic National Convention as a member of the Rules Committee.

If nothing else the Osage County delegation has united the Democrat party, on the issue of the Tallgrass Prairie Preserve. This became known prior to the vote when a voice from the back hall said, "We are here as Democrats and we have Democrats asking us for our help, as Democrats we must unite behind them and support their amendment and their cause."

The Stop the Prairie Preserve movement has gained the momentum and has swept across the state like a prairie fire and will continue to burn it's way to the Nation's Capitol.

I'LL SEE YOU IN WASHINGTON – Stanley Ann Mattingly, left, is an Osage Indian and a delegate from Osage County to Democrat State Convention, met with House Speaker Jim Wright of Texas. Mattingly informed the Speaker that "We have trouble in Osage County" and that she would be attending the hearings on the Tallgrass Prairie Preserve later this month. Speaker Wright said, "I'll keep an open ear to the voices of concern from the Osage People." (J-C Photo by Nelson Carter.)



OSAGE COUNTY DELEGATION, left to right, Stanley Ann Mattingly, Pam Carter, Vera Camargo, Pawhuska, Steve Barton, Bill Supernaw, Shidler, Larry Ammons, Lewis Gray(background) not pictured were Leeann Ammons, Nelson Carter, Pawhuska and Alice Jake of Hominy, representing District One. Gary Weyl of Burbank and Melvin Reed of Foraker representing District 5. The delegates took their opposition to the creation of the Tallgrass Prairie Preserve to the floor of the State Democrat Party Convention held May 14-15 in OKC. (J-C Photo by Nelson Carter.)

STATEMENT OF MELVIN REED, PAST PRESIDENT, OSAGE COUNTY CATTLEMEN'S ASSOCIATION

Mr. REED. Basically my points today before the committee is that there is strong opposition in Osage County and it comes from all over, all segments, all the industries that are involved. We are going to pursue this. It is important to all of us, just as it is important to those that are proposing it.

We do recognize that the major proponents of this come from special interest groups and we have a problem with believing that legislation from special interest groups is good representation for local citizens of the country.

Economically how it affects the people in my area is quite wide. First of all, tax burden. We are shifting a large substantial tax base to the remaining landowners, property owners, throughout the county and the state. This tax shift does not only include ad valorem but some other revenues that the different governments get as far as gross production, REA, public service, which make up a large portion of those revenues for those governments.

I would like to also add that beef production is a major industry in Osage County. We are proud of it. Being a third generation rancher, I'm very proud of it. And we never cease to brag about our beef production in Osage County. We do produce a large amount of beef there, and I say to this committee that not only would this park, as proposed as 25,000 acres, would eliminate, which cattle people feel like that it probably would completely eliminate, but the threat of additional spread of this park and the park boundaries are quite real. And I will address those in just a moment.

I'd also like to point out that beef production in Osage County has always been a stepping stone to the farmer feeder either in the west or the north primarily with its grass resources. I foresee a conflict here, a breaking of this chain, this beef production chain. From the calves that are produced in the south, southeast, quite a number of cattle come from Arkansas and Texas and on south. They are grazed in Osage and in on to the feed lots west and north of us. So, I believe this is an important chain in beef production, and we certainly want to keep an eye on this.

I also think that it will hamper the oil production. It will also hamper some jobs on ranches.

I would like to address—probably one of the most important parts of this proposed legislation is the willing seller subject. And certainly it needs to be discussed at all angles. Primarily we have some willing sellers or have had, and I agree with that. However, I do raise the question today to this committee, do we have those willing sellers out there today, or are we creating legislation that would almost automatically create willing sellers.

I know in the bill itself, there is a major flaw in the acreage that we are buying, the way I interpret it. We say approximately 50 acres of fee simple, but yet I call your attention to line 12 on page 7 that pertains to the uneconomic remnants outside the boundary or the fee simple or the land that is being acquired. I would like to point out to the committee that the top green core area is a large part of Oklahoma lands holdings in Osage County. However, it's

not anywhere close to all of it. I would think that this legislation might also include their other lands.

Also, the Barnard land is also quite extensive. I would feel that the Chapman land acreage would be included or could be included under this part of the legislation.

The Drummond holdings on the south are also a large family and with ties that go across the county from one end to the other.

This is quite extensive acreage. It could be easily viewed that this bill is actually authorizing close to 140,000 acres of fee simple land. I think that we need to address that because it is dangerous to everyone concerned about limiting the acreage.

Also, it has been pointed out about hunting and fishing in other tallgrass areas. We do have some other parks in the National Osage. They consist of short grasses, mid-grasses and some tallgrasses. But the State of Oklahoma has 850,000 acres in its wildlife management area. And there are hundreds of thousands of acres of that that has tallgrass prairie in it. I feel that we have some duplication here, and we certainly want to look at the possibility of having too much.

In closing, I would like to ask this committee to veto this bill. I do not feel that it protects the interests that are supposed to be addressed, and I would ask that you vote in that manner. Thank you.

[The prepared statement of Mr. Reed follows:]

TESTIMONY, S-1967. TALLGRASS PRAIRIE BILL.
Melvin L. Reed
MAY 26,1988

I am a third generation cattle rancher and landowner within and adjoining the preserve; a member and past president of the Osage County Cattlemen's Association; President of the Shidler School Board; a voting delegate representing Foraker, Osage County, and the fifth district at the Oklahoma State Democratic Convention, and a votng taxpayer.

I am opposed to Senate Bill S-1967. I represent a vast majority of county and state-wide opposition to this bill. The unnecessary government control of the grasslands of Osage County would be detrimental to various groups, destroy the unique heritage and environment of the county, and disrupt the tallgrass that the rancher has carefully preserved.

IF THERE IS A MAJORITY OF STRONG OPPOSITION TO THE TALLGRASS PRAIRIE PRESERVE, WHY WAS THIS BILL SUBMITTED TO THE SENATE?

From the very beginning , Senator Nickles and Congressman Edwards stated that they would not sponsor legislation for the park if it did not have the support of a vast majority of the community and area. There is only a vast majority of oppostion to the legislation. How has this legislation continued it's progress? Our congressional delegation has received bad advisement from staff, one-sided information from the promotors of this Bill, and the suppression of opposition news from the news media.

Senator Nickles appointed a task force in the fall of 1984. These individuals chosen did not represent their group. For example:

A. Lee Holcombe: The Osage County Cattlemen's Association was opposed in 1984 and still is opposed to the proposed Prairie Preserve.
B. Bill Martin: The Osage Tribe was opposed in 1984 and still is opposed to the proposed Prairie Preserve.
C. Harold Murnan: The Osage County Commissioner's Office also continues their opposition to the proposed Prairie Preserve.

The task force did not identify the many objections and concerns of the majority of area citizens. The task force did not hold open meetings. They held closed meetings without the opposition represented.

The major proponets of S-1967 consist of a few environmental special interest groups. Environmental groups have had increasing influence in government affairs. A recent survey showed that ten environmental groups have a total membership of about 5.8 million people and a total budget of $113.5 million. It is not surprising to see why the crys from the citizens of this county have not been heard. These powerful and professional groups, funded by our tax dollars, are the prime instigators of this legislation. We do not have the necessary funds or full-time employed people to fight this government intervention. Legislation supported and promoted

by special interest groups does not represent the citizens of Osage County and the rest of the United States.

THE NUMEROUS GROUPS OPPOSING THE PRESERVE AND THEIR REASONS ARE AS FOLLOWS:

1. Osage County Cattlemen's Association
2. Osage Tribe
3. Farm Bureau
4. Independent Oil Producers
5. Osage county and state Democrats
6. Osage County Republicans
7. School Districts
8. Osage County Commissioners

The rancher and oil producer have been affected by the gross National Debt. I have seen and felt the pain suffered by the ranching and oil industry in this county. I am disgusted and discouraged about the time and effort expendedfor a non-priority, pork barrel project such as this.

The legislation will take from the tax roll approximately 50,000 acres fee simple land and reduce the valuation of 50,000 acres of easement lands. There is a threat that additional land will be included in the preserve.
A major Ad valorem tax reform has been passed by the Oklahoma State Legislature. The Senate Bill 1967 can not replace or forever be able to replace the tax burden that will be shifted to all citizens of this county and state. There will be additional tax revenue lost from personal property, gross production, REA and public service taxes.

The public schools in Osage County have had drastic cut-backs in their funding. Reduced budgets have made it necessary to cut the curriculum and the number of employees. The establishment of this unneeded Federal Preserve would result in further reductions and would be detrimental to the educational and future needs of the children in this area.

Environmental groups do not want cattle grazing in the Preserve. They want native grazers(buffalo. elk, etc.). This would result in unnecessary cost for confinement and would be a nuisance and health hazard to adjoining land owners. The proposed fee simple land would mean a loss of beef production of 5 million pounds of beef per year, valued at 4 million dollars. This Preserve would break the beef production chain that exists between southern states, Osage County grass, and the western feedlots. I agree with Congressman Mickey Edward's statement that there would be very few out of state visitors to this park.

THE INCOME FROM TOURISM WOULD NOT COMPENSATE OR JUSTIFY THE ABOVE LOSSES.

THERE IS NO NEED FOR GOVERNMENT CONTROL OF THE TALLGRASS IN OSAGE COUNTY.

The rancher of Osage County represents a culture and tradition almost unique in the United States, a tradition of independent, self-reliant ranches and cattlemen who have lived in harmony with the tall grass prairie and preserved the best aspects of their environment for more than 80 years. If left alone, the rancher of Osage County will preserve their heritage and tallgrass prairie far more effectively than any Federal Agency could do. As stated in Sen. Nickles newsletter

of August, 1985, the U.S. Government does not have the expertise to manage a tallgrass prairie nearly as well as our own cattlemen and ranchers. Members of this subcommittee; The Osage Tallgrass is in excellent condition because of the ranchers hard work and God's blessings.

There are many established Prairie Parks existing today. I suggest that each member of this committee visit these parks and see the short grasses, the mid-grasses, and the tallgrasses that are presently being preserved. The state of Oklahoma already has 850,000 acres of public hunting with native grassland being protected by the Wildlife Department.

The preserve is not needed for research. Our Universities and state government have ample resources to do their research. Additional funding would be needed to finance these projects.

The tallgrass prairie is not vanishing, but increasing. The Federal Government CRP has goals of increasing pasture land by 45 million acres.

There is no threat to the tallgrasses. The land is not suitable for crop growing and there is no danger of city or industrial development.

I AM CONCERNED ABOUT THE FUTURE OF THE TALLGRASS PRAIRIE, OSAGE COUNTY AND THE FEDERAL GOVERNMENT.

The Federal and State Government ownership of 55% of the total amount of land is a threat to private ownership.

The Federal Government should immediately begin reducing our National Debt. If there is money available from royalties on offshore oil leases, this money should be applied to the national debt.

The philosophy of willing buyer and willing seller is incorrect. We do not want the Federal government to be the buyer.

If this legislation continues, it will not become the crown jewel of the Park Service as suggested by William Mott, but a black eye to the National Debt and a burden to future generations of Osage County.

Secretary of the Interior, Donald Hodel, stated that there would be an enormous push to prevent oil production and cattle grazing. Within five years, anyone carrying on commercial activity in the park would find it difficult if not impossible to operate because of the red tape.

I ASK THIS COMMITTEE TO VETO SENATE BILL 1967 FOR THE BENEFIT OF OUR HOMES, FAMILIES, AND INDUSTRIES IN OSAGE COUNTY. The freedom of private ownership should be encouraged and not controlled. I request that formal hearings be held in Osage County. These hearings would disclose the serious opposition and conflict that the passage of bill S 1967 would create. Thank you for your time and interest concerning this matter.

Melvin L. Reed

MELVIN L. REED
Foraker, Oklahoma

Senator NICKLES. Mr. Reed, thank you very much for your comment.

If I remember, isn't your ranch up on the northwestern side of the proposed area?

Mr. REED. Yes, sir.

Senator NICKLES. You got caught in the fire, didn't you?

Mr. REED. Right.

Senator NICKLES. When was that?

Mr. REED. September of 1984, yes, sir.

Senator NICKLES. It was that long ago?

Mr. REED. It sure was.

Senator NICKLES. Has the grass come back in good shape?

Mr. REED. Senator Nickles, we have had just some tremendous good years as far as weather, and we have used some herbicides. Stocking rates have been altered considerable. And it has come back. It actually exceeded the range experts prediction of how long it would take.

Senator NICKLES. If your brother Ronnie?

Mr. REED. Yes, sir.

Senator NICKLES. He got hit pretty hard with that fire too, didn't he?

Mr. REED. Right. We kind of have a joint operation.

Senator NICKLES. I'm glad to hear that it did come back.

I'll ask you this question to you and Mr. Ricketts since you're both in the cattle business. You mentioned the beef chain where a lot of people would bring up their calves and fatten them up before they go to Guymon or north. I guess people really have been fattening their cattle in Osage County going back to the trail drives in the 1800's and late 1800's. Osage County's grass, on the amount of pounds you can put on per acre (probably exceeds that of any other county in the country) doesn't it?

Mr. RICKETTS. I would expect so, yes, sir. It is good grass. The summer is the prime time. The cattle leave there sometime between late July and the first of September. But what they do in the spring and early summer, yes, is tremendous.

Senator NICKLES. They really put on a heck of a lot of weight in that period. When do most of them come in.

Mr. RICKETTS. Most of the cattle come in in early spring. And they keep them till maybe the latter part of July if they can carry them that long if the weather is good. And then they leave there and go on to the feed lots.

Senator NICKLES. Mr. Ricketts, you mentioned the opposition from the Osage County Cattlemen's Association. We tried to put language in that would insure that there would be access to continued grazing and management. We heard Mr. Holcombe mention this earlier. Do you see a mistake or shortcoming in the legislation that could improve that? Do you think the language isn't good enough, or you just more or less opposed to it on general principles?

Mr. RICKETTS. Well, I'm glad you asked that question because I wanted to clear this up. No, we have no problem, Senator Nickles, with the grazing.

But you've heard testimony all morning this morning, and I've sat here and heard it. And one part of what the cattlemen do

oppose is the fact that we all cannot be the size of these three ranchers. We are not all large ranchers. If this land does come available on the market, we have a thing that is nationwide called the FFA, Future Farmers of America. And it would entitle a lot of young people to get into the ranching business is this land is for sale in small quantities. Any rancher can't accommodate such large quantities of land. This is the Cattlemen's Association stand. There would be valuable lease land available that has not been available for years due to these ranchers restricting it. And this is what the Cattlemen's Association's opinion of that is.

Thank you, sir.

Senator NICKLES. It is my understanding that the land would be available for leasing for grazing inside whether it be fee simple or not. Is that your understanding?

Mr. RICKETTS. That's my understanding. Yes, it is.

Senator NICKLES. I appreciate that. I appreciate your comments and I also appreciate your sincerity in representing a lot of the cattlemen. I have been on that tour where you visit a lot of the ranches, and I think some outstanding things are being done in that area.

Mr. Graves, you mentioned several things concerning oil and gas production. As you know, I share the concerns that you and Mr. Adkisson mentioned as far as anything that would reduce production in Osage County. I think I've told both of you and I've told other people that certainly Senator Boren and myself and Congressman Edwards and Inhofe have stated all along that we don't want to reduce production in Osage County. We realize how important it is to the economy of the county, the economy of the Osage Indians, and the trust that we have with the Osage Indians, and the protection of the mineral rights.

I will compliment the Osage Tribe for their forethought. I will also say that we have had the Secretary of the Interior testify when we've talked about mineral management that the Osage Tribe has done a better job in management of minerals than almost any other entity that they deal with. And they've had all kinds of problems, as you're well aware, with royalty calculations and so on. My compliments to the tribe for the good job that they have done in management. I understand your concern in not wanting to see that base diminished in any way whatsoever, and I agree with you.

Is there language in the bill that you think maybe didn't go far enough? I heard Mr. Mott make a very strong statement, a pledge. I happen to believe him. Is there something else that you think we could or should do that would greater insure protection for mineral production? And I will say mineral production, not just oil and gas production. That is one of the amendments that the BIA had recommended, that we expand it to mineral production which would include coal or limestone or other minerals in that area. I would think that that is a good amendment. But is there any other language changes that you think should be considered?

Mr. ADKISSON. I have a thought. And I think Senator Boren has a personal hands-on experience in it also.

This act and your attempts to protect the Osage is—the efforts to protect—we appreciate what you've done. But let me say this. You

understand our operation, and I mean this complimentary, Jack. We, the Osage Tribe, do not have an oil company. We do not mean select sites for development. We have to have the outside developers. That is his job and he is a hard-headed—and as I say, I meant it complimentary—businessman. He has to buy a lease anywhere from $4,500 to $150,000 which he has done, or more than that, and then expend $95,000 to drill a well. Well, he has to make a cold business judgment and not let the Osage influence him or anything else. He has his own business statistics.

In the creation of a preserve, this is the buzz word that has run our operators saying that they will not go into the area. Proof of the pudding is in the Skiatook Lake area which we were successful in legally stopping the Corps of Engineers as far as Candy Creek, and we don't take that as merit. We were just trying to protect mineral estate at that time in the Skiatook. Senator Boren worked very hard with the council towards trying to arrive at a settlement on that matter. And again, we have language in the settlement bill that said the Osages will still own the minerals and have a right to come in and drill for oil and gas. Our operators have chosen not to come in to those areas even though they have a right, and we can't force them to do it.

So, the answer to your question as to suggested language in the bill would be to mandate the oil and gas operators to buy leases and spend their money. And that's the only way.

I think this is what has happened. You have taken all these pains to protect the Osage, but unless we have operators to buy the leases and spend their money, then those rights are useless.

Senator BOREN. Mr. Graves?

Mr. GRAVES. Yes, sir. Thank you, Senator Nickles. And there again, no one knows any better than I know on how you and Senator Boren have helped the independent oil and gas producers in the past. And it is appreciated.

Well, in the interest of time, that same thing was in my written testimony, but I deleted it because I knew I was going to run out of time anyway.

But if there are two prospects, one in the preserve area and one somewhere else that is not in the preserve area, simple economics of drilling and completion and compliance would dictate that you would go to the other area and stay away from all this hazard and hassle that you will have to go through. I mean, the Park Service has already said they want to direct routes of ingress and egress. And there is nothing in here about water. Who determines if the water——

Senator NICKLES. I appreciate your bringing that up.

Mr. GRAVES. Thank you, sir.

If the water in a pond is too low for their scenic goals, no, you can't use that water. We want you to haul water from town not use it out of our pond here. Now, all of that has been presented. That's in this written testimony and also that was the working paper that I sent up here I guess a year or so ago that set out all these things. Basically the preserve area would no longer be competitive with comparable drilling prospects in other parts of the state or even the county.

Then we're so concerned about what are the environmentalists going to do. All you have to get that government ownership of land, and then there's no way that you can keep them from coming in and suing, as I mentioned in here. That's a hassle. There is no way that you can protect us against that just as there is no way you can protect us against what a future Congress will do. And we can't afford to take the chance on it.

Senator NICKLES. I'll correct you on the last part. For some period of time Senator Boren and I are going to be in the United States Senate. So, we can do something——

Mr. GRAVES. Lord willing. We'll go along with that, yes, sir. [Laughter.]

Senator NICKLES. One final comment and I'll turn it to Senator Boren.

On the oil and gas issue, we went to a great deal of trouble, as you can tell by this map. Some people say, "why is that drawn that way." The reason it is drawn that way is that we went to a great deal of trouble to try and exclude as much as possible oil and gas production areas. I think we excluded 382 active wells. There are only 36 active wells that are included in the 100,000 acres.

Mr. ADKISSON. Sir, 172 wells.

Senator NICKLES. It's 172?

Mr. ADKISSON. It's 172 wells.

Senator NICKLES. In the fee area. Excuse me. There are 36 in the fee area and the total would be 172.

You can still tell we went to a lot of trouble trying to exclude the real production areas, again to minimize all the problems which you all have discussed. So, it was drawn very much with the intention of trying to come up with the area that would still provide for the Tallgrass Prairie Preserve and also complement and assist the production.

We have verbal assurances. We have legislative assurances. I hear what you are saying though. If it pours cold water on possible producers and they decide to go elsewhere that can be a problem. I don't see us putting language in to mandate that they would do it.

Senator Boren, did you want to add something?

Senator BOREN. Thanks very much. I really appreciate the testimony that this panel has given. I think the panel is certainly no stranger to me, nor is the county. We have been involved for a long, long time. Ralph and I and others on the tribal council, as he mentioned, have worked together for a long time. We worked on the stripper well exemption from the windfall tax which took virtually all of our Osage County production out from under the tax. And I understand that Seminole County and Osage County are both what we call mature fields that have very similar economics. We have worked together on the problems.

And you're right exactly in the way you described the problems we have had with the Skiatook situation which I think you also recognize that there is no legislation. At that time we made an agreement there wouldn't be any legislation introduced to authorize any more.

Mr. ADKISSON. As long as you were the U.S. Senator.

Senator BOREN. As long as I was here. Now, I know there might be some who wouldn't want me to stay too much longer, but as long as I am here, there won't be.

And we've worked together very closely. And I want you to know, and I think the panel knows this and others that are here from Osage County do know that I'm very serious about wanting to represent you and your interests. I feel that very strongly. I'm just your hired hand up here.

And Jack knows how we have worked many, many times on independent oil matters, and the first time I guess I ever went to Osage County was with my dad back when a lot of the ranchers in Osage County helped him in the organization of the state cattlemen's association when we were first getting started. So, all these ties go way back with the kinds of interest that are represented across the table here, and I have a sincere concern about it.

I think you made some good points. This idea that you could go in and change the BIA regs—in other words, not go through the Interior Department. You could still get some trouble with the BIA regs. And I want to go back and look at that and see if there is anything we can do on that.

Mr. ADKISSON. Senator, if I might. You know, the Osage tribal council has gone to great expense for TV pictures of this area as well as others.

Senator BOREN. Yes.

Mr. ADKISSON. And they have shown 52 very good what they call lead target areas. We have supplemented that with a seismic study which proves out.

Senator BOREN. Right.

Mr. ADKISSON. We're having a lease sale June 15. None of these leases have been put up or nominated by people because of the possibility that it might be a preserve. We have gone to a lot of expense. We know that there are some good prospects and it is our duty as the council as trustees to develop these underdeveloped areas.

Senator BOREN. I understand your concern, and let me say again. The council has done a good job of going out and providing the data and so on and trying to entice the people. And I understand what you're talking about. I understand also the litigation question which if there's anything wrong with the country today—and I say this as a former practicing lawyer—we've got too much litigation and we tie up economic activity for months and years in litigation. I made a note on that.

I understand the sovereignty question also. I made a note on that because it is not our intent to in any way diminish the sovereignty over the area.

The buildings. I don't know what we would do about that. For example, if there is a house, a ranch house or something, on the surface, is that considered a taking of the minerals?

Mr. ADKISSON. Well, sir, as an individual, now someone could go out there and build a ranch house or whatever, and the Osage would be obligated to drill in accordance with BIA regulations, say, 300 feet from the dwelling. And that we know we can't stop. And that's part of life for us.

However, when we're talking about the United States of America as a trustee, they're in a different position than that individual. And they cannot do anything that might jeopardize, harm, diminish any part of that trust.

Senator BOREN. I understand that.

Mr. ADKISSON. So, that's why it is a different situation than a ranch owner building a house as opposed to the U.S. Government building a Federal facility.

Senator BOREN. I understand what you're saying and that's something we need to look back into again. At the very least, if some arrangement were worked out it should be regarded as a taking, that it would have to be compensable, compensation paid to the tribe for a taking.

Mr. ADKISSON. And we feel the whole area would have to be subordinated because of the——

Senator BOREN. I understand exactly. And we've gone through that before and I agree with your legal position on that. So, I'll look at that again.

I understand the problem about discouraging exploration. I made that note. And the water problem which again we will look back into that, Jack, as I think that's an important point.

Mr. GRAVES. Excuse me, sir. Please look into this issue. If the Sierra Club——

Senator BOREN. And the Cypress situation.

Mr. GRAVES. I mean, it's a parallel situation. And that's what we're afraid of.

Senator BOREN. I also understand the point I think Mr. Reed was making about the uneconomic fragments. Again, what we have intended to do is leave no leave no loopholes about expanding the size of this preserve without it coming back through to require an act of Congress because I understand why those suspicions are there. We can certainly understand that. So. I understand your concerns.

Let me say in talking with some of the people who have expressed concern to me, I have almost had the feeling that you were worried we were going to try to ram something down your throat, that there was a steam roller coming along and so on. Now, as I say, I've been associated with people in Osage County a long time. I want to be able to go back to visit, look my friends in the eye and have a good relationship and have them know I've kept my word. I've always tried to do that. And we'll work through this. We will try to work through these problems with you.

I also understand we're talking about the future of the younger generation to stay in ranching. Of course, we badly want to see that happen.

Mr. ADKISSON. Senator, I appreciate your concern, and certainly we would be willing to talk with anyone at any time. And I would say there. There has been a lot of conversation to the effect that the Osages or the oilmen or whoever or cattlemen are afraid of what might happen. And what I've said to the people on that, and probably everyone in this room, we all have house insurance, home insurance, health insurance because something might happen.

Senator BOREN. Sure.

Mr. ADKISSON. Only on this mineral estate, we can't go buy an insurance policy on that.

Senator BOREN. I understand exactly what you are saying. You remember at Skiatook when we worked out part of the compensation, we said to the Government we don't care what you say. We're going to have less development and we got some compensation put in on it because we insisted that even though they had said these rights are protected, we knew it was going to discourage exploration and we wanted some compensation paid to the tribe for it. And as I recall, you and I worked on that together and some others. And we were pretty emphatic with the Government on that point.

But let me say this. And I heard the comment a while ago that, well, we're a long way away from—Pawhuska doesn't have the problem of urban sprawl right now. It's got the problem of keeping enough jobs to keep the people that are there. And I understand that. And the 5-acre ranchettes I talked about are a long way away. They're in Tulsa.

But let me mention this to you too. All of you love this area more than I do. You live right there with it. As I say, the Osage Nation were there first. And they preserved it and the most eloquent writings describing this have been written by Osages. I mentioned John Joseph Matthews. It's the most beautiful description of the Osage I have ever read in my life. He is close to it. It was his. He was a part of it. He was attached to it. And I know how our cattlemen have protected it. You've been fine stewards. Osage County has more conservation cooperators. I have been up and have spoken that the conservation is better than any other county in the United States I believe. I mean, there is not anybody that exceeds it.

But I do think—and I would urge you to think about this, and I would really welcome your input on this. I'm just as sincere as I can be about it—it is something beautiful. And even though we are around it all the time, and especially people right there among it, it is hard to see how unique it is and what it really ultimately could mean to the country and what it could mean to let other people experience it and the opportunities we would have to preserve our heritage for the next generation. And we have to think here and we should think here.

One of the problems with our country is sometimes we don't think more than 6 months ahead or a year down the road or 10 years down the road. We ought to think about not just now, but we ought to think about 100 years from now. We really should. We should sit back and think about 100 years from now. And I really honestly am concerned that we find some way of preserving this as we look way off down the future that none of us can see with our crystal ball what may happen. I know one thing, that areas like this are—we talk about oil and gas, a precious resource. Nobody has worked harder than I have to try to make sure it is developed and we have some energy independence. Our water is a precious resource. But this kind of a place is precious.

And if there are objections to the way we're trying to do it, we will continue to work with you. And I've urged that we come down Pawhuska, and some people have said, oh, my gosh, go down to Pawhuska and let everybody come in and say what they think. Abso-

lutely. This is a democracy and everybody ought to have that right. And after all, I wouldn't be here if the people hadn't elected me. And I want to hear from the people. We are all part of the same family. We don't have anything to worry about talking to each other. We're all in this together. We'll work it out together. We'll try to. And if it can't be done right, it won't be done. You know, we'll just try to work it out. There have been very good things that have been raised today, and I'll try to work with you on them.

Think about what can we do, what kind of mechanism can we devise to preserve this. I don't know if the tribe has ever had any interest, if the Osage Nation has ever had any interest, in being a part of the solution of making sure there is preservation. I don't know what we might look at. But I'd like to have us start thinking. In other words, there is a lot of thought gone into why we are afraid of this. I understand that. As I said, with my own experience with the Corps of Engineers—and they could tell you some of the blunt discussions that they've had with me—I understand why people are worried. I really do. And I don't think you're wrong to have these fears. It is also the history of wherever else we have had these projects in the past, and sometimes attitudes change over time.

Thank God we have some national parks. I think we would all agree. We don't want to not have a national park system. I'm glad there is Yellowstone and so on. And you go out and read the history. They were shooting people down there. They might even have tried to take some shots at some Senators—I don't know—during the time it was created. But thank God we persevered and we did create some of these things. Now, we want to do this the right way.

I've got to run and vote too or they will cut me off. It's my own amendment. I hate not to be over there to vote on it. We will come back. We will just stand briefly in recess. We'll come back and finish the other panels.

We will really work hard on looking at all the points you've raised because you've raised some good points. And then I would like to ask you all to really put on your thinking caps too to see how can we take some positive initiatives to make sure that we preserve this on down the road. And I'm real honest. I think it's a way to showcase our heritage not just for ourselves, but for the whole country and to do something really important down the road. So, I want to be a Senator who thinks not just of now, but 100 years from now.

And knowing how the people of this area—let me say there is no group in this country—I've been reading a lot of the Kaw Wall legends here recently. And as I say, I've read a lot of John Joseph Matthews' writings about the Osage. So, no group has been more sensitive to the earth and a better steward of it than our Indian citizens have been. And no group has been better than the ranchers up there in terms of what they have done. We've all got these deep feelings that are in us of wanting to preserve something here that is almost a spiritual feeling.

And so I would like for you to help me on that score too. Figure what can we do to make sure that 100 years from now—there may not be any urban sprawl problems. But you don't know. I mean, open land is one of the most scarce things we have in this country.

Stay on the east coast for a while, and, boy, do you ever miss that openness. Let me tell you. You're all crowded in here. There's more asphalt in Washington, I can tell you, than there is grass, period. But I want us to think about it.

I'm going to have to go vote or they'll cut me off. I come back, and I really would like to hear from you. And if everyone will stay right there, Senator Nickles and I will both be back and we'll finish the other panels and let everyone have a chance to talk.

But I think the more we can sort of get our communications going and work on this together, I just feel like where there's a will, there's a way. And we have a lot of common feelings. We've got some fears that need to be approached.

We will stand in recess briefly.

[Recess.]

Senator NICKLES. Mr. Shoemake, do you care to proceed?

STATEMENT OF BRANSFORD HUNT SHOEMAKE, EXECUTIVE VICE PRESIDENT, THE TALLGRASS PRAIRIE PRESERVE ASSOCIATION

Mr. SHOEMAKE. Senator Nickles, thank you. I, as everyone else, who has appeared today thank you and the members of the committee for the opportunity to be able to express my views and that of the Tallgrass Prairie Preserve Association. My name is Bransford Shoemake. I live in Osage County, OK, and I have a law practice which includes Osage Indian law. I speak for the Tallgrass Prairie Preserve Association which sponsors the creation of the prairie preserve.

Nationwide support for the preserve is almost unanimous. Statewide, as Mr. Payne has said, over 200,000 Oklahomans have petitioned for the creation of the preserve. And Oklahoma leaders, such as former House Speaker Carl Albert, former Governors, Raymond Gary and George Nigh, and former U.S. Senator and present Governor, Henry Bellman, have fully endorsed the creation of the preserve.

I appreciate the concerns which you gentlemen of the committee have shown for the preservation of the Osage mineral estate, and I can assure you that the Tallgrass Prairie Preserve Association shares those concerns. But you must know that opposition to this preserve is limited almost exclusively to Osage County. Such opposition results mostly from the arguments of the members of the Osage Tribal Council that neither the Congress nor the courts can be trusted to protect the rights of the Indian headrights to the enjoyment of their mineral estate.

As Mr. Adkisson said, in the late 1800's, the Osage Indians removed from Kansas to what is now Osage County, OK. Here they owned their land and its minerals in common until 1906 when by act of Congress their land was allotted in severalty and their mineral estate was divided into 2,229 shares. Since then, much of their land has been sold to non-Osages, and many of their mineral or headright shares have passed into the other tribes of Indians and non-Indians and to churches and to businesses and to corporations.

It is incorrect to say that all of the Osage Tribe owns the minerals of Osage County for 1977, the last year for which I have figures from a congressional report, only 2,183 of the 9,250 Osages own any

part, fractional or otherwise, of a mineral headright. Since the Osage Tribal Council represents less than 25 percent of the Osage people, and then only in regard to their mineral estate, it is inaccurate to say that this mineral council speaks for all of the Osage people for 75 percent of those people have no voice in the selection of the council, and the council has no jurisdiction over either the person or the property of that 75 percent of the Osage people. This mineral council does have power to approve leases, to determine the bonus value of mineral leases, and has power with the Interior Secretary to determine royalties. Otherwise its power is confined to monitoring the activities of the Government agency superintendent who administers the mineral trust.

This disenfranchised 75 percent of the Osage Tribe is that part of the tribe which would profit most from the preserve. Much of this group owns restricted land upon which businesses catering to the tourism could be created while the majority of this 75 percent which owns no land would greatly benefit from the many, many new employment opportunities which this preserve would create. All of the people and their children who live in Osage County are entitled to compete for the same living standards, educational benefits and employment opportunities as persons residing outside of the county.

With the establishment of the preserve within the county, sufficient impetus will be given the county economy to stabilize its economy, and its business and industrial community can be rebuilt and can go forward and keep pace with other parts of our country. And as a result, both Indians and non-Indians will benefit.

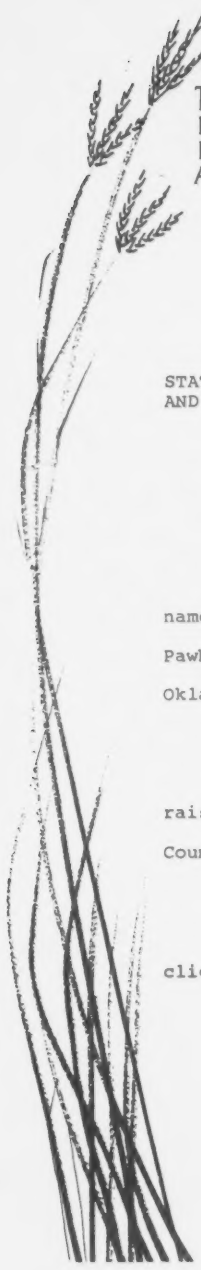
You see then that the main argument advanced against the preserve by the opponents is that this Government cannot be trusted to enforce the law providing that production of oil in the preserve would be subject to the same standards and control as that of the remaining part of the county. Such an argument is just not true for the same law which created the mineral reserve to begin with is the only law upon which the owners may rely for the protection of their enjoyment of the mineral estate.

All America needs a preserve. This is just not a local issue. They need the preserve as a place where we can renew our faith in God and we can refresh our minds and our souls by the recreation of this small part of the prairie, complete with the forms of life which God himself placed there.

And so, I now ask the question as Thoreau asked America in 1858. "Why should we not, who have renounced the King's authority, have our own national parks and preserves not for idle sport but for inspiration and our own true recreation?" Thus, the Tallgrass Prairie Preserve Association which believes in the rule of law, believes that this Government and you, Senator Nickles, and our Nation's leaders can be trusted to not only protect the rights of the beneficiaries of the mineral trust, but that it can also be trusted to preserve for all of the people this small, but wonderful to behold part of our great land, the destruction of which, like that of the carrier pigeon, would rightfully haunt our people to the end of time.

I thank you.

[The prepared statement of Mr. Shoemake follows:]



Tallgrass
Prairie
Preserve
Association

P.O. Box 1557 Pawhuska, Oklahoma 74056

THE TALLGRASS PRAIRIE PRESERVE ASSOCIATION

STATEMENT SUBMITTED TO THE PUBLIC LANDS, NATIONAL PARKS AND FORESTS SUBCOMMITTEE OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

May 26, 1988
by Bransford Hunt Shoemake, Executive Vice President, The Tallgrass Prairie Preserve Association

CHAIRMAN BUMPERS AND MEMBERS OF THE COMMITTEE: My name is Bransford Hunt Shoemake and I am a resident of Pawhuska, Oklahoma, the county seat of Osage County, Oklahoma and the site of the Osage Indian Agency.

My family has a tradition of Indian blood and I was raised in and spent twelve years in the schools of Osage County.

I am an attorney and a substantial part of my clientele is composed of persons of Osage Indian blood.

Board of Directors

President - HARVEY PAYNE, Pawhuska, Oklahoma
Executive Vice President - BRANSFORD H. SHOEMAKE, Pawhuska, Oklahoma
Vice President - CHARLES E. CUMMINGS, Bartlesville, Oklahoma
Secretary-Treasurer - MELVIN L. TOLSON, Pawhuska, Oklahoma
KENNETH G. ADAMS, Bartlesville, Oklahoma
HERB BEATIE, Tulsa, Oklahoma
JIM S. CYRUS, Bartlesville, Oklahoma
CHARLES R. DRUMMOND, Pawhuska, Oklahoma
CHERYL FLETCHER, Ponca City, Oklahoma
TRIPP HALL, Tulsa, Oklahoma
LEE HOLCOMBE, Pawhuska, Oklahoma
RICK JAMESON, Oklahoma City, Oklahoma
EDMUND T. KENNEDY, Pawhuska, Oklahoma
RON KLATASKE, Manhattan, Kansas
DAVID LOWTHER, Ponca City, Oklahoma
D. E. MARTIN, Tulsa, Oklahoma
ODIE McREYNOLDS, Bartlesville, Oklahoma
JOE R. MOODY, JR., Tulsa, Oklahoma
TERRY MOORE, Bartlesville, Oklahoma
C. R. MUSGRAVE, JR., Bartlesville, Oklahoma
JOHN MYERS, Ponca City, Oklahoma
CLARK W. TRAMMEL, Bartlesville, Oklahoma
WILLIAM C. WHETSELL, Pawhuska, Oklahoma
JOSEPH H. WILLIAMS, Tulsa, Oklahoma

I now serve as the Executive Vice-President of the Tallgrass Prairie Preserve Association.

Our Association was founded in 1984 by citizens of our county who wished to work together to help create a tallgrass prairie preserve in our County. Over the years our organization and its supporters have come to include a wide diversity of people residing throughout both the State and the nation, a number of whom are members of the Osage Tribe of Indians.

The Tallgrass Prairie once covered over 250 million acres of the middle ground of America from the Canadian border to the Gulf of Mexico. Much of the tallgrass, however, was destroyed shortly after John James Audubon had noted with regret the disappearance of the "noble forest" of the East. This vast spoilation occurred despite the protests of such men as George Catlin, the great naturalist and painter who observed if the government would only intervene: "...by some great protecting policy," the wilderness "might in the future be seen...preserved...in a magnificent park..." containing within it flora and fauna "...in all the wild and freshness of their nature's beauty."

Enthralled by the beauty of the prairie, Walt Whitman, one of our greatest writers, said of the

Prairie that:

> "While I know that the standard claim is that Yosemite and the like afford the greatest natural shows, I am not so sure but that the prairies and the plains last longer, fill the aesthetic sense fuller, precede all the rest, and make North America's characteristic landscape."

Today less than three percent of that prairie remains, the only major segment of which is located within Osage County, Oklahoma.

Support for the Prairie is strong throughout the United States and, as our congressional leaders will tell you, petitions containing over 200,000 signatures of Oklahomans have been presented in support of the Preserve. In fact, outside Osage County there is almost no criticism of the Preserve proposal and that which exists within Osage County has been brought about by the so-called Osage Tribal Council.

The thrust of the argument of such Council is that if the Preserve proposal passes, Osage County mineral lessees will be held to anti-pollution standards already in place and already governing the extraction of minerals in Osage County. By such argument such Council tacitly admits that the existing pollution of much of the underground water of the county and the scarring of much of its surface has resulted from its own failure to enforce its own regulations.

Major Osage County oil producers, such as Phillips Petroleum, and most independent oil operators of the county, such as Jack Graves, have no problem living with and producing oil upon the basis of such standards. Such producers pride themselves upon returning the land at the end of their leases in as good a condition as the land was when their leases were made.

The preserve issue was thus created by the Osage Tribal council as a political issue. The tribal council members told their voters during the last election that the Osage Tribal mineral holders would suffer if the preserve was established. They said that it did not matter what the law said. They said the federal government would handicap the extraction of oil from the land. A professional opponent of the Park Service was called in, meetings were held, propaganda was spread and the so called tribal council was re-elected by the headright holders.

The fact is, however, that the council does not speak for the tribe.

The Osage Tribe has no tribal government and it has no true Tribal spokesman.

There were 2,229 Osages in 1906 when the Osage Roll was closed.

The Osage Indians lived on the Osage Reservation which includes 2,264 square miles, an area more than twice the size of Rhode Island and larger than Delaware. Each of these 2,229 persons received one share, or one headright, of the mineral estate of the Tribe.

In 1907 when Oklahoma became a state, the Osage Tribal Reservation became Osage County, Oklahoma. But in becoming a part of Oklahoma, the Osage Tribe reserved its minerals. Today the Osage mineral estate is still divided into 2,229 parts, each part being known as a headright. According to Congressional Report 95-1127, of the 9,205 Osages who were carried on the Tribal rolls as of April 22, 1977, an estimated 7,022 had no headright interests at all. While there were 2,229 headright holders in 1906, there are only 2,183 Osages today who own any headright interest. Of the 9,205 Osages owning these 2,229 shares, some own but a factional interest which produces only a handful of dollars per quarter while others own several headrights. Today one headright generates $2,400.00 per quarter but such sum has been dropping drastically and will continue to do so. It is worthwhile to note that many headright shares are owned by non-Indians and by businesses and

even churches. The headright shares have become so fractionated that the tribal council complains that they have difficulty maintaining records concerning such shares.

The so-called tribal council is elected only by those members of the Osage Tribe who possess a fraction or more of an Osage headright. Such headright holders cast votes, like stockholders of a modern corporation, in proportion to the size of the headright share which they own. It is thus seen that the 7,022 Osage Indians who own no headright interest are not represented by the Tribal council. These Osages who own no headright are without tribal representation of any sort.

Thus, this so called tribal council represents only Osage headright share holders and then only in respect to their mineral estate, nothing more.

I was raised and educated upon fees paid my father by members of this Tribe. We represent many Osage Indians, both mineral and non-mineral participants. We would not appear here upon behalf of the Preserve if we thought the Preserve would adversely affect their interests.

The fact is that the mineral holders have nothing

to fear from the Tallgrass Prairie Preserve for its creation will not decrease Osage County oil production. The same law which created for the 25% of the headright owners of the Tribe their right to retain such interests also protects their right to produce such minerals.

The good lessees and producers of this County are sufficient to produce all the oil this county can produce without waste and without releasing salt water and oil over the surface of the land, much of which is still owned by members of the Osage Tribe, many of whom have no mineral interest.

Our Association more truly represents the interests of the people of our County than does the Osage Council. We have every confidence in the National Park Service's ability to manage the Preserve in such a manner as to create for ourselves and our posterity a living, wonderful-to-behold, memorial to the lost Prairie and we have every confidence that in doing so the National Park Service can and will fully protect the rights of the mineral holders to continue to extract minerals from the land according to the same standards which have governed such extraction in the past.

The Preserve will benefit both the 25% of the Osages who have headright interests and the 75% of the

Osages who have headright interests and the 75% of the Osages who have no headright interests. Today Osage County oil production is but a fraction of what it was ten years ago. The end of such production in substantial quantities is already in sight. Osage County and its people, both Indian and non-Indian, need the preserve to sustain the economy of the County.

The Osage people and their children who live in Osage County are entitled to compete for the same living standards, educational benefits and employment opportunities as persons residing outside the county. Without the establishment of the Preserve it is unlikely that Osage County can provide more for the Osages than say the Sioux reservation presently provides for the Sioux Indians. But with the establishment of the Preserve within the County, sufficient impetus will be given the county economy to stabilize its economy and its business and industrial community can be rebuilt and can go forward and keep pace with other parts of the county and as a result both Indian and non-Indian will benefit.

All America needs the Preserve and all America owes Nature and Nature's God the recreation of a part of the Prairie.

And the grass and trees and streams and flowers of the Preserve and the buffalo, deer, elk, eagles, hawks and other animals which once inhabited the prairies in abundant numbers need a home if they are to survive. And we can renew our faith in God and we can refresh our minds and our souls by the re-creation of this small part of the prairie complete with the forms of life which God himself placed there.

Our Association asks this committee to act quickly to create the Preserve. If you do not do so this last representative area of the great American Prairie will soon cease to exist and like the carrier pigeon will become lost for all time.

And so, I now ask you, as Thoreau asked America in 1858:

> "Why should we not, who have renounced the King's authority, have our own national preserves...not for idle sport or food but for inspiration and our own true recreation?"

Our Association thanks you for this opportunity to appear before you. You are leaders and where leaders create memorials, such as the Tallgrass Prairie Preserve, thoughtful men will approve and the multitude will applaud.

Senator NICKLES. Mr. Shoemake, thank you very much.
Our next panelist is Mr. Whetsell.

STATEMENT OF WILLIAM C. WHETSELL, PRESIDENT, WILLMAR, INC.

Mr. WHETSELL. Senator Nickles, members of the subcommittee, I am Dick Whetsell, a rancher, a member of the Osage County Cattlemen's Association and the Oklahoma Cattlemen's Association and the National Cattlemen's Association for many years.

For 14 years I worked as a range conservationist for the Soil Conservation Service in Texas and Oklahoma. For 28 years I helped put together and served as president and manager of a 200,000-acre ranching set up with ranches in Oklahoma, Texas, New Mexico, Colorado and Kansas with headquarters in Osage County. Mr. Chairman, for the last 40 years, I have lived on this tallgrass range, raised cattle on it, burned it occasionally, abused it in difficult times, and I'm especially thankful to you and this subcommittee for an occasion to say a good word in support of this bill.

I feel we must take advantage of the current opportunity. Now is the right time to set aside a small area of this productive plant and animal community for special management. And some of the important reasons for doing this are: one, it's original size and importance to our American culture, 250 million to 500 million acres. Most of the rich corn and soybean land of the farm belt was once tallgrass prairie. I have seen isolated examples of this ecotype on post-climax sites as far west as New Mexico, Montana, Wyoming, Colorado and subtypes are easily found east of Georgia and Alabama. And there are sizable areas of excellent tallgrass prairie in western Arkansas.

Number 2, only a few hard to find, special use areas remain of the original plant community, and these areas are so small that the original fauna mixture and balance is completely gone.

The tallgrass prairie now being grazed has changed and continues to change because of management decisions based on normal grazing practices and certainly even in its present condition is not symbolic of the original plant community.

Four, now is the time to move because in the suggested preserve area you can, by searching, still find at least one member representative of every plant participant in the original cast. This area has been grazed by livestock roughly 80 years, and with proper care and a grazing system that permits maximum plant development, as well as beef production, it could approach its original condition in another 100 years.

At this time there is no shortage of rangeland for red meat production. In fact, there were large areas of native grassland unstocked this grazing season.

However, after considering all of the reasons why they should be done, by far the most important function of this preserve could be its effect and contribution to education research and appreciation related to properly managing the other 800 million to 1 billion acres of natural grasslands in the United States. The basic ecological principles used as guides have equal application in carrying for

tall, short- or mid-grass ranges as well as desert shrub and forested ranges.

The range always tells a true story. The plant community does not lie. As you stand in a thorny thicket in south Texas, or a heavy juniper forest in New Mexico, or brushy cover in Oklahoma, that at one time was referred to as a sea of grass and no brush, you can hear the voice of the range loud and clear saying this is not the right way. Recently I heard a great humanitarian say concerning the problem of world hunger that in the areas where hunger was rampant, the land was also bare and naked without plant life. And he also stated that our quality of life in America is more dependent on how we manage our natural resources than how we handle any other problem that we face.

As an Oklahoman, I would be overjoyed to have this greatly needed resource management education and information center in our state. This natural outdoor classroom could prove invaluable in developing new technology concerning the art and science of range land management.

In summary, I also feel that our congressional representatives and their staff people have been sensitive and responsive to the concern of all parties. We appreciate their efforts and applaud their balanced compromise. However, nothing worthwhile is harvested without work and difficult decisions. For example, there would not be a single redwood tree for us to admire in the great redwood forest in California except for early leadership looking to the future. We are responsible for establishing values and establishing direction. And we must do more than take care of today's needs in our planning.

I close my statement with the cowboy prayer, which is not original with this cowboy.

> Lord, help me when I know that something should be done, but I don't know what to do. But most of all, help me when I know perfectly well what to do, but don't have the inspiration or the courage to do it.

Thank you very kindly for your attention and the opportunity to speak in behalf of this bill.

[The prepared statement of Mr. Whetsell follows:]

DRAFT

STATEMENT OF WILLIAM C. DICK WHETSELL PRESIDENT OF WILLMAR, INC., A RANCH MANAGEMENT FIRM, BEFORE THE PUBLIC LANDS, NATIONAL PARKS AND FORESTS SUBCOMMITTEE OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE.

MAY 26, 1988

Mr. Chairman, members of the subcommittee, my name is Dick Whetsell, Pawhuska, Oklahoma, where I run a ranch management consulting company. For fourteen years I worked as a range conservationist for the Soil Conservation Service in Texas and Oklahoma. For twenty-eight years I helped out together and served as president and manager of a 200,000 acre ranching set-up with ranches in Oklahoma, Texas, New Mexico, Colorado and Kansas. Mr. Chairman for the last forty years I have lived on this tall grass range, grazed cattle on it, burned it occasionally, abused it in difficult times and I especially thank you and your subcommittee for this opportunity to say a word in support of S. B. 1967.

We must take advantage of this opportunity; now is the time to set aside a small area of this productive plant and animal community for special management. Some of the important reasons are:

1. It's original size and importance to our American culture (250 million to 500 million acres). Most of the rich corn and soybean land of the farm belt was once tall grass prairie. I have seen isolated examples of this ecotype on post climax sites in New Mexico, Montana, Wyoming, Colorado and excellent sub-tyoes are easily found in Georgia and Alabama with some sizable areas of excellent tall grass in western Arkansas.

2. Only a few hard to find special use areas remain of the original plant community and these areas are so small that the original animal life mixture and balance is gone.

3. The tall grass prairie now being grazed has changed and continues to change because of management decisions and certainly in its present condition is not symbolic of the original.

4. Now is the time to move, because, in the suggested preserve area you can, by searching, find at least one member representative of every plant participant in the original cast. This area has been grazed by livestock roughly 80 years. With proper care it could approach the original condition in 100-150 years.

5. There is no shortage of range land for red meat production. In fact there were large areas unstocked this grazing season.

However, by-far the most important function of this preserve could be its effect and contribution to education and research related to managing the the 300 million to 1 billion acres of natural grassland in the U. S. The basic ecological principles used as guides have equal application in caring for tall, short or mid grass ranges as well as desert shrub and forested ranges. The range tells the story--the plant community does not lie. As you stand in a thorny thicket in south Texas or a heavy juniper forest in New Mexico or brushy cover in Oklahoma, that at one time, was a sea of grass and no brush, you can hear a voice loud and clear saying, "this is not the right way". Recently I heard a great humanitarian say, concerning the problem of world hunger, that in the areas where hunger was rampant, the land was bare and naked without plant life. He also stated our quality of life is more dependent on how we manage our natural resources than any other problem we face.

As an Oklahoman, I would be over-joyed to have this greatly needed resource management information and education center in our state. This natural outdoor classroom could prove invaluable in developing new technology in the field of range management.

In summary, I feel our congressional representatives and their able staff people have been sensitive and responsive to the concerns of all parties. We appreciate their efforts and applaud their balanced compromise. Nothing worthwhile is harvested without work and difficult decisions. For example, there wouldn't be a single origional redwood tree for us to admire in the great redwood forest in California except, for leadership looking to the future.

We must do more than take care of todays needs in our planning. I close my statement with an old cowboy prayer, which is not original with this cowboy, --Lord help me when I don't know what to do, but be sure and help me when I know what to do. but don't have the courage to do it.

Thank you for your attention and this opportunity to urge you to act now to give life to the TALL GRASS PRAIRIE PRESERVE._

Senator BOREN. Mr. Whetsell, thank you very much. I appreciate your comments.

I was with you shortly after the big fire back in 1984, and it seems like it wasn't that long ago. Has the grass returned in a pretty good state?

Mr. WHETSELL. The grass never left. The condition is good. This particular type of a prairie is very persistent, Don. It stays. It basically stays. There was a lot of damage, but no elimination basically of plants. It takes over a long period of time. Yes, it looks good.

Senator NICKLES. Mr. Whetsell, I know you and Mr. Shoemake need to leave. You have a plane to catch. I don't have any further questions.

Senator Boren, did you have any questions of those two panelists?

Senator BOREN. No. I'm glad Mr. Whetsell is not in politics with his ability to speak as eloquently as he does. A beautiful expression. And we appreciate the contribution which you've made with your own scientific work advancing the knowledge of all of us.

This is exactly what I was trying to say before we had to go over to vote. I hope we do have the insight and courage to do something really special here. How we do it has to be worked out.

Mr. WHETSELL. There is a way.

Senator BOREN. I feel that there is a way. Where there are people of goodwill all working on something, there will be a way for us to thread our way through where everybody is treated fairly.

Mr. WHETSELL. It is right.

Senator BOREN. It is right for us to try to find a way to preserve this.

Mr. WHETSELL. Right.

Senator BOREN. So, we're just going to have to all huddle here in this big family we have in Oklahoma and try to figure out how to do it.

Mr. WHETSELL. And we can.

Senator BOREN. We can.

Senator NICKLES. Thank you both very much.

Next we have David Martinez who is the tallgrass organizer of the Sierra Club.

STATEMENT OF DAVID MARTINEZ, SOUTHERN PLAINS REGIONAL VICE PRESIDENT, OKLAHOMA CHAPTER, SIERRA CLUB

Mr. MARTINEZ. Thank you, Senator Nickles and Senator Boren. My name is David Martinez, the Southern Plains regional vice president of the Sierra Club. The Sierra Club and its Oklahoma chapter would like to thank the committee and the Oklahoma delegation for allowing us to testify on this legislation to establish a tallgrass prairie national preserve.

Our vision is the creation of a first-rate prairie preserve, a place for people to see and experience America's characteristic landscape as it was when settlers arrived, a place to forever protect the best remnant of tallgrass prairie, once one of our largest and most diverse ecosystems, but today the only major American ecosystem not protected by the national park system; a preserve that is large enough to perpetuate the prairie's great diversity and provide

enough quality habitat to reestablish bison, elk and other native species; a place where people of diverse recreational interests to find enjoyment; a place where only the sky limits the view; and a preserve that will attract nationwide attention and appreciation.

We are pleased that the Oklahoma delegation has introduced S. 1967 and we fully agree with the basic concepts put forth in that legislation. We agree with the setting. Osage County is undoubtedly the best site in the country. We agree that the prairie needs to be managed, and thus there needs to be continued grazing and burning on the prairie preserve. And we agree that the Osage Indians should continue to exercise their subsurface rights and produce oil just as in other preserves made up of split estates.

We feel there are a few concerns that need to be addressed to insure that the bill creates the vision of a preserve that we all share.

First, we feel that the current proposal is not large enough to protect the prairie and specifically several outstanding areas. The scientific community has said that a minimum of 50,000 to 60,000 acres are needed in one unit to represent the prairie ecosystem. The current proposal, however, only has 25,000 acres in the largest unit, and that section is only two to five miles wide. This leaves the area vulnerable to damage from outside disturbances. The National Park Service has said that less than 83,000 acres may not provide as much opportunity to reestablish true prairie conditions and protect the core from external influences. Since 70,000 acres of prime prairie are available from willing sellers, we feel it is important to take advantage of the fortunate willing seller situation and buy the larger blocks of land.

These are real places that offer very desirable, high quality habitat and recreational values. The Eastern Barnard Ranch is a prime example. By deleting Eastern Barnard from the proposal, we remove one-quarter of the riparian stream bottom habitat from the preserve. These stream bottoms are in short supply in the rest of the proposal which is predominantly grasslands. They provide important corridors for wildlife to range from woodlands to the grasslands thus increasing the numbers of both animals and species found on the preserve.

Adding these areas would give Congress the opportunity to expand the preserve beyond roadside tracts because the Eastern Barnard areas are the only sections more than four miles from the circulation routes.

Some have said that the preserve can be enlarged later. However, once the preserve is established, development pressures increase around the fringes and can destroy the natural values we are trying to preserve. Even if later acquisition is possible, the cost can be very expensive. Let's do it right the first time while it is available and affordable.

We believe the bill should give the Park Service clear power to manage the area professionally and properly. The legislation establishes a local range management committee that has concurrence power over the Park Service's management plan. This could create a situation where the goals of some individuals and the goals of the National Park Service conflict. The result might compromise restoration of the tallgrass prairie. We would rather the advisory com-

mittee be just that, advisory, as recommended by the 1985 local citizen task force and others.

Protecting the national preserve from damage related to oil and gas development is also a concern. While the Sierra Club supports full protection of the Osage mineral rights and future drilling, we are concerned that the Bureau of Indian Affairs regulations specified in 1967 do not adequately protect the natural values of the prairie. Saltwater spills and abandoned wells are common in Osage County. And the current regulations only require the operator to restore the area to as near as practicable to its original state. This often means just removing the equipment. We urge the delegation and the subcommittee to fill the gaps in BIA regulations with some specific language to protect the surface owner.

Third, we believe that in order to allow diverse enjoyment of the preserve, parts of the preserve need wilderness designation to protect the scenic, recreational and ecologic values. This will allow greater appreciation of the area, make the preserve more of a national tourist destination, encourage people to stay for extended periods, and should not restrict development of the Osage mineral estate.

We are most willing to work with the delegation and the members of the subcommittee to create a first-rate, national caliber tallgrass prairie national preserve. We will be glad to lend assistance and assess our concerns in more detail.

Finally, we extend an invitation to the subcommittee and the delegation to tour some of the more unique and less visited areas in the available lands.

Thank you.

[The prepared statement of Mr. Martinez follows:]

SIERRA CLUB

330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

TESTIMONY OF
DAVID MARTINEZ
SOUTHERN PLAINS REGIONAL VICE-PRESIDENT
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
UNITED STATES SENATE
CONCERNING THE
DESIGNATION OF A TALLGRASS PRAIRIE NATIONAL PRESERVE
S. 1967

MAY 26, 1988

Mr. Chairman and members of the Subcommittee, I am David Martinez, the Southern Plains Regional Vice President of the Sierra Club. The Sierra Club and its Oklahoma Chapter would like to thank the Committee and the Oklahoma delegation for allowing us to testify on this legislation to establish a Tallgrass Prairie National Preserve. We wish to commend your leadership on this issue. The 440,000 member Sierra Club was founded almost 100 years ago and one of our earliest conservation campaigns was to protect Yosemite National Park. Since then, we have worked with Congress and this Committee to create many new and successful national parks. We are excited to be working with the Committee again on this important addition to the National Park System.

We want to briefly express some of our vision--a vision undoubtedly shared by the delegation--for a Tallgrass Prairie National Preserve, and describe how this vision focuses the Sierra Club's approach to this legislation.

Our vision is the creation of a first-rate prairie preserve:

o a place for people to see and experience "America's Characteristic Landscape" as it was when the settlers arrived, a land inhabited by bison and other native animals.

o a place to forever protect the best remnant of tallgrass prairie. This was once one of our largest and most diverse ecosystems, but today less than 3% remains. Our hope and greatest goal is to protect a portion of this ecosystem--the only major American ecosystem not protected by the National Park System.

o a preserve that is large enough to perpetuate the prairie's great diversity and provide enough quality wildlife habitat to reintroduce bison, elk and other native species.

o a place for people of diverse recreational interests to find enjoyment. Not just a place for a brief tour by automobile of a vanishing landscape, but a chance to explore, study, enjoy and to understand the experiences of our ancestors living within or crossing through these seas of grass.

o a place where only the sky limits the view and where man's creations, at least in a portion of the preserve, fade into the distance and allow today's visitor to contemplate this magnificent creation unencumbered.

o a preserve that will attract nationwide attention and appreciation. One tailored to the local situation, yet one that doesn't disappoint the visitor who expects and appreciates a certain quality in a national park unit.

This legislative effort, this year, may be our last chance. We are pleased that the Oklahoma delegation has introduced S. 1967, and we fully agree with the basic concepts put forth in that legislation.

We agree with the setting--Osage County is undoubtedly the best site in the country. We agree that the prairie needs to be managed and thus there needs to be continued grazing and burning on the prairie preserve. And we agree that the Osage Indians should continue to exercise their subsurface rights and produce oil just as in other preserves made up of split estates.

We have been working with the delegation and we feel that there are a few concerns that need to be addressed in S. 1967 to ensure that the bill creates the vision of a preserve that we all share.

First, we feel that the current proposal is not large enough to protect the prairie and specifically several outstanding areas. Much emphasis has been placed on the 50,000 acre maximum size of the preserve. One reason is that the scientific community has said that a minimum of 50-60,000 acres are needed in one unit to represent the prairie ecosystem. The current proposal, however, only has 25,000 acres in the largest unit and that

section is only two to five miles wide. This leaves the area vulnerable to damage from outside disturbances. The National Park Service has said that less than 83,000 acres "may not provide as much opportunity to reestablish true prairie conditions and protect the core from external influences." Since 70,000 acres of prime prairie are available from willing sellers, we feel it is important to take advantage of the fortunate willing seller situation and buy the larger blocks of land.

Our concern about size is not derived from numbers simply pulled out of the air. The Osage site was identified by the National Park Service as the best in the nation, and these are real places that offer very desirable, high quality habitat and recreational values. The Eastern Barnard Ranch is a prime example. By deleting the Eastern Barnard from the proposal, we remove one-quarter of the riparian streambottom habitat from the preserve. These streambottoms are in short supply in the rest of the proposal which is predominantly grasslands. They provide important corridors for wildlife to range from the woodlands to the grasslands thus increasing the numbers of both animals and species found on the preserve. Pond Creek offers a beautiful 75' cliff that cascades to a wonderful winding stream. The birds have seen so few people that they are almost tame.

Adding these areas would give Congress the opportunity to expand the preserve beyond roadside tracts because the Eastern Barnard areas are the only sections more than four miles from the circulation routes.

Some have said that the preserve can be enlarged later. However, once the preserve is established, development pressures increase around the fringes and can destroy the natural values we are trying to preserve. Even if later acquisition is possible, the cost can be very expensive, as proved to be the case in the additions to Redwood National Park. This is an historic opportunity, and history shows that park lands missed are often park lands lost. Let's do it right the first time while it is available and affordable.

Secondly, we believe the bill should give the Park Service clear power to manage the area professionally and properly. We would like to raise two examples. The first concerns the Range Management Plan. We agree that grazing and fire are key aspects of the management plan that are not problems. However, the legislation establishes a local range management committee that has "concurrence" power over the Park Service's management plan. This could create a situation where the goals of some individuals and the goals of the National Park Service conflict. The result might compromise restoration of the tallgrass prairie. It might also set a dangerous precedent for future park bills. We would rather the advisory committee be just that--advisory--as recommended by the 1985 local citizen task force and others.

Protecting the National Preserve from damage related to oil and gas development is also a concern. While the Sierra Club supports full protection of the Osage mineral rights and future drilling, we are concerned that the Bureau of Indian Affairs (BIA) regulations specified in S. 1967 do

not adequately protect the natural values of the preserve. Salt water spills and abandoned wells are common in Osage County, and the current regulations do not provide the surface owner adequate tools to reduce or prevent these adverse impacts. The BIA regulations only require the operator to restore the area to "as near as practicable to its original state." This often means just removing the equipment. These BIA regulations were not written with national preserve protection in mind. We urge the delegation and the Subcommittee to fill the gaps in BIA regulations with some specific language to protect the surface owner. Phillips Petroleum, which operates under the National Park Service's regulations on park service units in Texas, has said they cause "no significant additional costs". We would like to see additional protection here by supplementing the BIA regulations.

Thirdly, we believe that in order to allow diverse enjoyment of the preserve, parts of the preserve need wilderness designation to protect the scenic, recreational and ecologic values. Because the preserve proposal is bisected by a road, the wild areas need protection to allow for a variety of recreational pursuits from high quality hunting to backpacking trips. This will allow greater appreciation of the area, make the preserve more of a national tourist destination, encourage people to stay for extended periods, and should not restrict development of the Osage mineral estate. We have attached a map of our wilderness proposal for the Subcommittee's consideration.

We urge the Congress to move expeditiously on this legislation as the extremely favorable willing seller situation that exists today may not continue indefinitely. This is most welcome since all too often legislation to establish many park units must exert the right of eminent domain, as in the case of the 85,000 acre Big Thicket National Preserve in Texas. Currently, it appears that if the legislation is enacted soon, the Park Service will be able to negotiate prompt acquisition of desired areas with the handful of willing sellers.

Looming on the horizon are threats to the prairie such as sale and subdivision of the ranches. The ranches may go on the market and be sold or split up if the preserve is not established now. There are not very many 29,000 acre parcels of prime prairie left. Incompatible development may also threaten the 20 mile vistas that abound in the area.

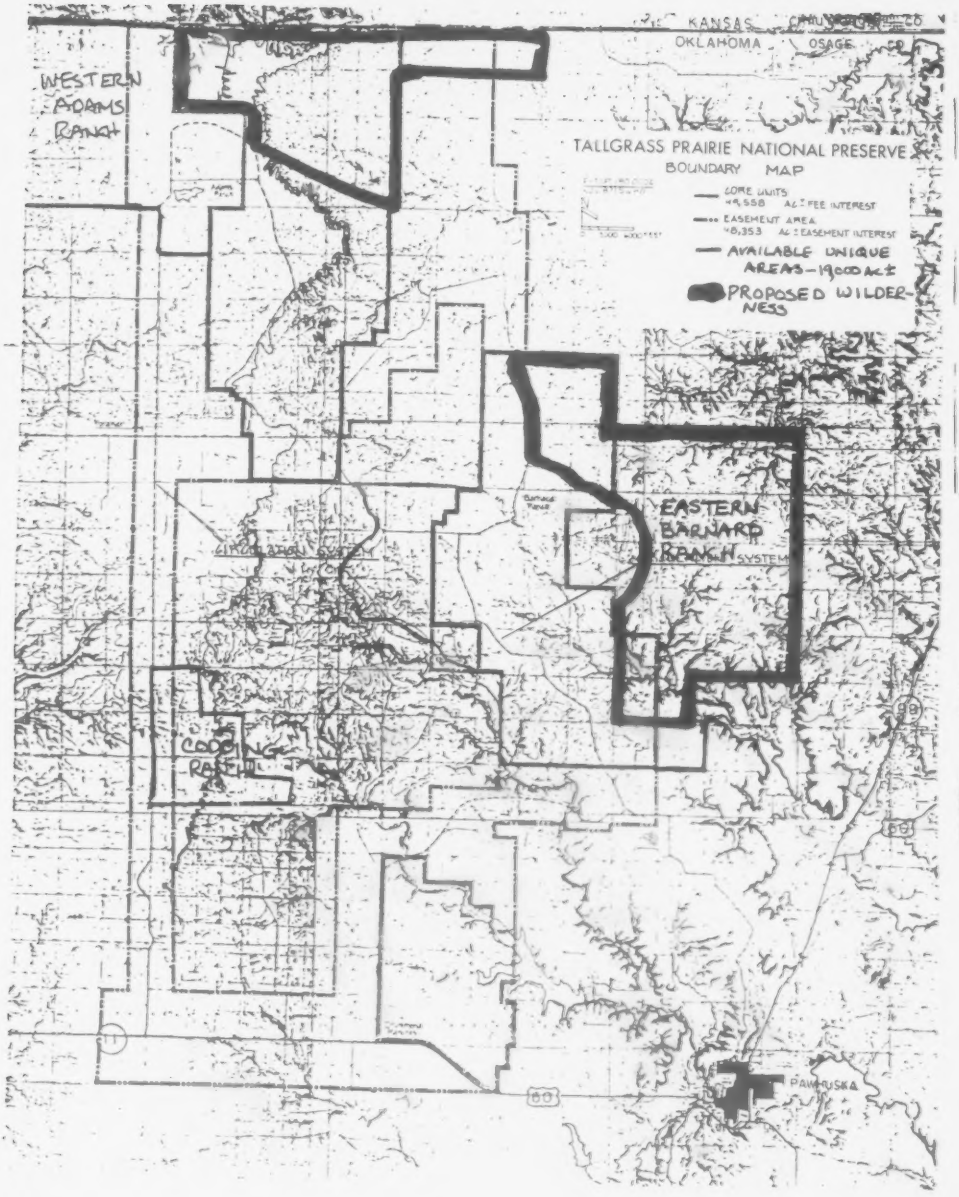
We feel that the prairie preserve has tremendous support in Oklahoma. This is demonstrated by the 200,000-plus signatures and letters that the Sierra Club, Oklahoma Wildlife Federation, and the Tallgrass Prairie Preserve Association have gathered over the past three years. Many of these supporters are from Osage County and northeastern Oklahoma.

The preserve idea also has considerable national support as shown by the many groups here today supporting establishment of a Tallgrass Prairie National Preserve. This is an ecosystem that needs to be protected in a National Park unit.

Again, we wish to thank the delegation for their efforts on this legislation and for the opportunity to speak before you today. We are most willing to work with the delegation and members of the Subcommittee to create a first-rate, national-caliber Tallgrass Prairie National Preserve. We will be glad to lend assistance to the committee and discuss our concerns in more detail. Finally, we extend an invitation to the Subcommittee and the delegation to tour some of the more unique and less visited areas in the available lands.

Thank you.

SIERRA CLUB WILDERNESS PROPOSAL 5-26-88



Senator NICKLES. Mr. Martinez, thank you very much.

Our next panelist is John Kennington, chairperson for the Oklahoma Audubon Council.

STATEMENT OF JOHN KENNINGTON, CHAIRMAN, OKLAHOMA AUDUBON COUNCIL

Mr. KENNINGTON. Thank you. My name is John Kennington. I'm a resident of Tulsa, and I'm chairman of the Oklahoma Audubon Council. The council directly represents the eight chapters of the National Audubon Society in the State and approximately 5,000 members of the society.

When the 29,000 acre Barnard Ranch went on the market in October of 1983, a leader from the Tulsa Audubon contacted the regional office of the National Audubon, and we initiated the effort to draw attention to this once in a century opportunity, an opportunity that is now further enhanced by the availability of the adjacent Adams Foraker Ranch and the portion of the Drummond Ranch near Bluestem Lake.

The unique circumstances that must not be overlooked is that nearly 70,000 acres of exceptional native tallgrass prairie is available on a willing seller basis. The Congress of the United States will never have a better opportunity to acquire these properties at a reasonable price.

The 550,000 member National Audubon Society and its 500 chapters and state councils throughout the country have been dedicated to the establishment of a tallgrass prairie national park or preserve for two decades, and we strongly endorse Senate bill 1967. However, we do offer several suggestions for improvement.

First and foremost, we recommend the acquisition of all portions of the Barnard and Foraker Ranches which are suitable for this purpose and available on a willing seller basis, particularly since no land will be acquired at all unless all the objections which have been brought up today are addressed. Once we resolve those objections, why not purchase the land that is available now? Acquisition of the eastern portion of the Barnard Ranch and the western part of the Foraker Ranch would substantially enhance the preserve for the diverse purposes it will serve.

The primary purpose of the preserve should be to preserve and recreate the native prairie ecosystem that was once so prevalent throughout the central part of this continent. It should be large and diverse enough to accommodate herds of bison, elk, pronghorn antelope and other wildlife indigenous to the tallgrass prairie in this area.

It should also be designed to accommodate visitors from throughout the country and the world. They will come to enjoy the natural setting to pursue their interest in natural history and the culture of this area.

The preserve should also be designed to interpret the history of the Osage Indians and other tribes that live in northeastern Oklahoma. We want to be assured that their economic heritage in the mineral estate associated with these lands will be protected, and that oil and gas operations will continue in the future without disruption.

The preserve also offers an opportunity to encourage appreciation of the western American heritage associated with cattle ranching on these grasslands. With inclusion of the lands that are available, it can also accommodate research in prairie and range management with some lands available for demonstration of livestock grazing as part of the overall setting. Normal ranching should definitely be encouraged on the 50,000 acres outlined for conservation easements and a part of what is acquired in fee. However, we do not believe that an overwhelming portion of the land to be purchased in fee should be managed exclusively for livestock grazing purposes.

The bill needs to be improved somewhat to provide better clarity of purpose and a better balance of conservation interests representation on the range management committee and the advisory commission. Organizations like the Oklahoma Audubon Council should have an opportunity to serve on both of these bodies, and we believe that both should clearly be advisory in nature.

We urge this committee and Congress to move expeditiously to enact this legislation as soon as possible. If future generations of Americans are to enjoy a major sample of the natural grandeur of the tallgrass prairie, protected and managed in trust for all of this country's citizens, your support and leadership at this time is critical.

I would just also mention, Senator Boren, you had mentioned that there is no imminent danger of ranchettes now being built in Pawhuska in the next few years, but Tulsa is certainly a growing city and you said 50 to 100 years down the road. I think Pawhuska will be a suburb of Tulsa and be under pressure of development. I have two sons at home. They're both preschoolers, and I truly want them to be able to experience the tallgrass prairie with their children 100 years from now.

Thank you very much.

[The prepared statement of Mr. Kennington follows:]

Oklahoma Audubon Council

My name is John Kennington. I am a resident of Tulsa and chairman of the Oklahoma Audubon Council. The Council directly represents the eight chapters of the National Audubon Society in the state, and approximately 5,000 members of the Society.

When the 29,000 acre Barnard Ranch went on the market in October 1983, a leader of the Tulsa Audubon Society contacted the regional office of the National Audubon Society and we initiated the effort to draw attention to this "once-in-a-century opportunity" -- an opportunity that is now further enhanced by the availability of the adjacent Adams Foraker ranch and the portion of the Drummond Ranch near Bluestem Lake.

The unique characteristic of circumstances that must not be overlooked is that nearly 70,000 acres of exceptional native tallgrass prairie is available on a willing-selling basis. The Congress of The United States will never have a better opportunity to acquire these properties at a reasonable price.

The 550,000 member National Audubon Society and its 500 chapters and state councils throughout the country have been dedicated to the establishment of a Tallgrass Prairie National Park or Preserve for two decades, and we strongly endorse Senate Bill (S.1967).

We offer several suggestions for improvement.

First and foremost, we recommend the acquisition of all of the Barnard and Foraker ranches which are suitable for this purpose, and available on a willing-seller basis. Acquisition of the eastern portion of the Barnard Ranch and the western part of the Foraker Ranch would substantially enhance this preserve for the diverse purposes it will serve.

The primary purpose of the preserve should be to preserve, and recreate, the native prairie ecosystem which was once so prevalent throughout the central part of this continent. It should be large and diverse enough to accommodate herds of bison, elk, pronghorn antelope and other wildlife indigenous to tallgrass prairie in this area.

It should also be designed to accommodate visitors from throughout the country, and world. They will come to enjoy the natural setting, to pursue their interest in natural history and the culture of this area.

The preserve should be designed to interpret the history of the Osage Indians and other tribes that live in northeastern Oklahoma. We want to be assured that their economic heritage in the mineral estate associated with these lands will be protected, and that oil and gas operations can continue.

"more"

The preserve also offers an opportunity to encourage appreciation of the western American heritage associated with cattle ranching on these grasslands. With inclusion of the lands that are available, it can also accommodate research in prairie and range management, with some lands available for demonstration of livestock grazing as part of the overall setting. Normal ranching should definitely be encouraged on the 50,000 acres outlined for conservation easements. However, we do not believe that a large portion of the land to be purchased in fee should be managed as a "federal cattle ranch."

Along that line, the bill needs to be improved to provide better clarity of purpose, and a better balance of conservation interest representation on the Range Management Committee and Advisory Commission. Organizations like the Oklahoma Audubon Council should have an opportunity to serve on both bodies, and we believe that both should be clearly advisory in nature.

We urge this committee, and Congress, to move expeditiously to enact this legislation as soon possible. If future generations of Americans are to enjoy a major sample of the natural grandeur of the tallgrass prairie, protected and managed in trust for all of this country's citizens, your support and leadership at this time is critical.

Senator NICKLES. Mr. Kennington, thank you very much.

Senator Boren, did you have any questions or comments?

Senator BOREN. No.

Senator NICKLES. Both of you have suggested that the preserve is not large enough. Mr. Martinez, you indicated that you wanted to add another 20,000 acres.

Mr. MARTINEZ. To the fee area. Yes, that's correct.

Senator NICKLES. Are you proposing that we add more to the easement area as well?

Mr. MARTINEZ. Well, we're not as concerned with the easements. We are primarily concerned about the fee areas which we think is really where you're going to obtain protection of the prairie.

Senator NICKLES. Are you aware of the fact that there has been a considerable discussion amongst the congressional sponsors of the legislation, the proponents and opponents? We were trying to work out a compromise that would be satisfactory to all and alleviate some of the concerns of others, in other words, minimize some of the problems to oil production and grazing, et cetera. We're trying to preserve an adequate area but not one that would be too much of an intrusion.

Mr. MARTINEZ. Yes, I'm aware of that, and we don't mean to second-guess the hard work that the delegation has put in working on this. We are really just trying to focus in on what we believe are opportunities to explore and possibly improve the bill as it is considered. And we are offering these and pointing these out. And if there is nothing magic to the number of 50,000 and we could go above that and pick up some additional acreage and maybe even alleviate some problems that have to do with dividing up the ranches and so on that maybe this could be explored. And because the land is available on a willing seller basis, we just think that this should be examined, the possibility of picking up the additional land, and because the areas are so unique.

Senator NICKLES. I'll just make a comment to you and to all of our panelists today, both the proponents and the opponents. We have two panels of both. We have tried to be equally divided and tried to have an opportunity for those people who are in favor and opposition to make their statements today and also to offer their suggestions. For those that have done so, I appreciate it. In your comment I heard you say something about tougher BIA regulations, a possible wilderness area, and the size. Of course the size has been debated. It has been debated for years.

I appreciate those comments, but again I would hope people would understand that we have been working on this. Size, of course, is a critical element not to mention the fact of cost. Cost, of course, is a problem that I know Senator Boren and others are very concerned about as well.

Senator BOREN. I would just add to that. I have to agree with Senator Nickles' comments.

Again, what we have tried very hard to do—and obviously, the product is not finished. We have heard some things today I think we need to look back into and see what we can do. But we have tried to fashion a fair balance with all the interests, and I think it is perfectly appropriate, as we have heard from those who think

we're way too big in what we're doing and too intrusive, that we hear the other side of that coin.

But I would urge that once the balance is finally struck here that we try to find something we can all be for even if it ends up—I usually find around here when you find some sort of reasonable proposal that every point tries to reflect everybody's point of view and be fair to everybody, you end up nobody thinks it's perfect. Nobody does. And I doubt we will ever be able to come up with something here that everybody will think is perfect, but let's not let that prevent us from doing something that is good and worthwhile even if it is not perfect in the eye of every beholder. Obviously, we have very strong concerns.

And I think we have a rightful responsibility. The Government of the United States has made certain commitments to the Osage Nation, for example, and they have not been very good keeping the commitments in the past and we have a very strong responsibility to see that those commitments are kept. So, there are a lot of interests that have to be balanced here.

Senator NICKLES. Senator, thank you very much, and to our panelists, thank you very much for your contributions.

Senator BOREN. Senator Nickles, when you were out of the room and I had to leave to go to vote also a while ago, we had Stanlee Ann Mattingly who was to have been a member of the earlier panel. And she was indicating to me—I had to cut her off because they were about to end the roll call on the floor—that she might like to just make a brief comment to us. And I would appreciate it if we could hear from her.

STATEMENT OF STANLEE ANN MATTINGLY, MEMBER, OSAGE INDIAN TRIBE

Ms. MATTINGLY. Senator Boren. Thank you, Senator Nickles.

You were asking for suggestions. Well, there are quite a number of Osages in Osage County, in California and in Houston who are wondering why can't the land be put fee title—be put in the tribe's name in some kind of a purchase be exchanged. And then we could lease it to the Park Service.

[The prepared statement of Ms. Mattingly follows:]

Mr. Chairman and Members of this Sub-committee. I am Stanlee Ann Mattingly, a member of the Osage Indian Tribe and a life-long resident of Pawhuska, Osage County, Oklahoma. I am honored and grateful for this opportunity you have graciously granted me to address this sub-committee pertaining to the proposed Tallgrass Prairie Preserve to be situated in Osage County. I wish to state for the record that I, along with many others, am opposed to this proposal as now drafted and as it may be drafted in the future.

In the early 1970's, I first became aware of an effort on the part of a few local individuals and certain agencies and environmental groups unassociated with Osage County to create such a preserve in our county. At that time and now, I cannot understand what, if anything, necessitated such an effort and program. In 1973 certain prominent cattlemen voiced strenuous objections to the creation of such a preserve which would, in any way, limit restrict or affect the surface owners or lessees from the private use and enjoyment of said grasslands for the operation of the cattle business. These cattlemen were afforded prominent coverage of their opposition in the news media in the metropolitan press, local newspapers and television.

Of course, at that time, I was very concerned about the effect such a proposal would have upon the Osage Federal Reservation and Mineral Trust, in both of which I have a personal and collective interest with all other members of my Tribe, the Osage Nation.

I took no active role in opposing such proposal because the opposition was receiving comprehensive coverage in the news media. When that subsided, I was led into the false belief and hope that the proposal had been abandoned.

However, approximately two years ago, I again became apprehensive and concerned when it appeared that the same agencies, environmental groups, and some of the aforementioned prominent cattlemen identified by the news media to be "willing sellers" had renewed their effort supporting such a proposal.

I then began to take an active role in opposing the proposed preserve. During this period of time those of us, the Osage Tribe, the State Farm Bureau, the Osage County Cattlemen's Association, oil and gas operators, the Osage Preservation Coalition, a majority of the Osage County land owners, the Osage County Democratic Party, the Osage County Republican Party, the Democrats of the First Congressional District and Democrats at the Oklahoma State Democratic Convention, have overwhelmingly gone on record as opposing this proposal, S-1967 and HR-3803. Although all of these organizations have opposed said preserve, we have been unable to obtain any coverage from the news media.

I saw no alternative to making our opposition known other than to resort to the political process in an attempt to attract attention to our efforts. We were successful in passing a resolution opposing the preserve by a 95% majority at the Osage County Democratic Convention on April 9, 1988.

Although I was not present at the Osage County Republican Convention on March 5, 1988, they were successful in passing a resolution opposing the preserve.

We were successful at the Oklahoma State Democratic Convention held in Oklahoma City on May 14, 1988, in passing an amendment to Resolution No. 8 which states as follows:

> "Be it further resolved, that the Oklahoma Democratic Party joins the Osage County Democrats, the Osage County Cattlemen's Association, the Osage Indian Tribe, oil producers, the Osage Preservation Coalition and a majority of the Osage County land owners in opposing S-1967 and HR-3803 concerning the establishment of the Tallgrass Prairie Preserve in Osage County."

This amendment was introduced from the floor of said convention and overwhelmingly passed by a voice vote, requiring no count of the delegates voting for or those few who voted against the amendment. After this amendment was passed, some of us were told by office holders that it's passage was of no significance and would have no effect on this sub-committee, these hearings or any future proceedings pertaining to the persistent efforts by a few to obtain such a preserve.

Again we failed to obtain any coverage from or by the news media. It is apparent that the only way we can be heard in our opposition is through the political processes available to us. I am continuing my effort and the efforts of many who may rely upon me to voice their opposition before this sub-committee. We can only appeal to you to favorably consider our reasons and position for opposing this legislation.

The area of Osage County involved is beautiful, unique, rolling grasslands unspoiled by development. The area appears as it must have hundreds of years ago when my people and those who followed them arrived. If the area constitutes and represents the tallgrass prairie as it has always been, that is directly attributable to the care and concern of the owners of said lands who, throughout all the years, have carefully preserved it for their private purposes to raise cattle and is also attributable to the efforts of the Bureau of Indian Affairs in their regulation of the oil and gas industry. This area has always been available to the public by an excellent system of public, county roads which stretch for what might appear to some as endless miles through the prairie.

It is also productive land having sustained vast herds of beef cattle and prolific oil and gas operations throughout the years without adverse effect. The area is remote from any city or large town and suitable only for raising cattle and oil and gas operations and is too remote for any other type of development or use.

The oil and gas industry in this area has already been adversely affected by the mere fact that these bills have been drafted, because operators are reluctant to bid on oil and gas leases in an area that may fall within the control of the government for a preserve and all the attendant controls and regulations both stated in the legislation and the inevitable regulations which will follow. It seems a poor time to discourage domestic oil and gas operations while we grow increasingly more dependent on foreign oil.

Any obstacle to drilling or grazing depends on the legislation which creates the preserve, but therein lies the problem. If grazing and drilling are permitted by this legislation it is inevitable that once such a preserve is created there will be an enormous effort to prevent such by banning all grazing and drilling outright or by enacting regulations to such an extent that either or both will become impossible. There is a constituency that would oppose any form of utilization of this productive area. Within a few short years any cattleman or oil operator would find it difficult if not impossible to operate within the affected area.

It is impossible for us to understand why a government burdened with what appears to be an insurmountable deficit would appropriate and spend large sums of public monies for the purchase of 100,000 acres of productive, privately owned lands, from willing sellers or through other means, removing said lands from the private sector and creating an enormous park or preserve which is already available to the viewing public in addition to the 700 million acres or 34% of the United States already under control of this government.

Thank you Mr. Chairman and members of the sub-committee.

Stanlee Ann Mattingly

Stanlee Ann Mattingly
1614 Leahy
Pawhuska, Oklahoma 74056

TULSA WORLD, MONDAY, MAY 16, 1988

State Demos Pick Convention Delegates

BY CHUCK ERVIN
World Capitol Bureau

OKLAHOMA CITY — More than 1,000 Democrats elected their final 16 national convention delegates on the last day of their two-day state convention Sunday and chose Oklahoma's two members to the Democratic National Committee.

State Sen. Vicki Miles-LaGrange, D-Oklahoma City, and Tulsa oil man George Krumme easily won the national committeewoman and national committeeman slots in contests with Dr. Isabel Baker of Tahlequah and Earl Abernathy, Altus.

Miles-LaGrange will be only the second black from Oklahoma to serve on the national committee. The first was Secretary of State Hannah Atkins, and she was elected when each state had three national slots instead of two.

Miles-LaGrange will replace Lou Watkins, Ada, the wife of U.S. Rep. Wes Watkins, D-Ada. She chose not to run for a second term.

Krumme, a 12-year-veteran of the national committee, will be serving his fourth four-year term. He and Miles-LaGrange will take office at the end of this summer's Democratic National Convention.

They received support from delegates representing each of the state's six congressional districts, but a strong vote from the 1st district guaranteed victory. Krumme got all the 1st district votes cast in the national committeeman's race, 95-0.

Miles-LaGrange, a freshman senator, did nearly as well in the first district, winning 93-3.

Oklahoma will have 51 delegates at the national convention in Atlanta, Ga., July 17-20, including five so-called "super delegates."

The super delegates were chosen earlier in Washington, D.C., and are U.S. Sen. David Boren and the state's four Democratic congressmen.

Thirty delegates were selected at the six district conventions last month. The remaining 16 were elected Sunday — 13 for U.S. Sen. Al Gore, D-Tenn., and three for Massachusetts Gov. Michael Dukakis — the party's probable nominee.

Most of Oklahoma's Democratic notables attended the convention, including Boren, who addressed the group Saturday.

Boren was well received despite private criticism by some delegates. Democrats in Payne and Pottawatomie counties passed resolutions highly critical of Boren earlier this year. They criticized Boren for his Senate votes in support of Republican President Ronald Reagan.

There was almost no in-fighting at the state convention, however, and the shots that were fired all were aimed at Republicans generally and Reagan and Vice President George Bush in particular.

Most of the speakers made some reference to the revelation by former Reagan Chief of Staff Donald Regan that Nancy Reagan consults an astrologer and uses her advice to determine the president's schedule.

And one speaker referred to Reagan's tenure as "Reagan's eight-year reign of error."

The theme for the Democrats here was unity, and defeated candidates for national delegate and committee posts all pledged to work to elect a Democratic ticket in November.

Representives of the Gore and Dukakis campaigns were in firm control Sunday and elected preselected slates of delegates without any trouble. There were no dissenting votes in the Dukakis caucus.

The races between Miles-LaGrange and Krumme and a slate composed of Abernathy and Baker had been billed as a test of strength between rural and urban Democrats. It failed to develop, however, and Miles-LaGrange and Krumme — the urban candidates — picked up strong rural support.

Many rural Democrats voted for Krumme despite his support for party reapportionment that gave urban Democrats more represenation on the state Democratic Central Committee.

Senator BOREN. With the fee in the tribe with some sort of a lease arrangement or some sort of cooperation arrangement or something?

Ms. MATTINGLY. Yes.

Senator BOREN. Well, that's very interesting. Do you know if that has ever been done anywhere or not?

Ms. MATTINGLY. No. But the Osage is unique, is it not?

Senator BOREN. I have to say it is.

Ms. MATTINGLY. Its people and its county.

Senator BOREN. Yes. And there is certainly a tremendous reservoir of capability there to enter into certain arrangements.

I think that is very worth thinking about. Just because something hasn't been done, it doesn't mean we shouldn't consider it and think about it. But I appreciate that suggestion.

And I think again if we would just all put our thinking caps on here because I think that while we appear sometimes—this thing has gotten way blown out of proportion with both the proponents and opponents. We have got so many common values here that we're trying to work on.

Ms. MATTINGLY. And you want to preserve the land.

Senator BOREN. We want to preserve it.

Ms. MATTINGLY. And as far as I know, my tribe plans to be around for several hundred more years.

Senator BOREN. We hope so.

Well, I appreciate that suggestion. It's something I would like for us to pursue. And we'll talk some more with you about it, and we'll sort of talk to all those concerned in the tribal council. We will talk to the Park Service and see what kind of reactions we get. You know, we ought not rule out any options at this point. I appreciate the suggestion.

Senator NICKLES. Before you leave, I would just like to add a comment. I apologize to our panelists because we have had to run back and forth, and we weren't able to finish one panel. Ralph and others are still here.

I understand the concerns that the tribe has. Senator Bumpers asked me a question concerning headrights. What is the value of a headright per year now?

Ms. MATTINGLY. It's $150,000.

Mr. ADKISSON. The value of a headright as agreed upon by the Secretary of the Interior, the Osage agency, the Internal Revenue Service and the Oklahoma Tax Division approximately is around $51,000. That's the market value for which the Osage cannot sell, but that's for tax purposes.

Senator NICKLES. What would the annual income be?

Mr. ADKISSON. It would be approximately $8,000. It's below poverty level. And many of the shares are now fractionalized.

Senator BOREN. The majority of them are fractionalized, aren't they?

Mr. ADKISSON. Yes.

Senator BOREN. And the full income would be $8,000, but very few people would be receiving it.

Senator NICKLES. What do you have?

Mr. ADKISSON. Originally 2,229, and now the recipients probably number somewhere near 4,000 with all the fractionalized shares.

Senator NICKLES. How much of that $8,000 is current income from that year. Is that one year's income?

Mr. ADKISSON. We are required by the Congress to take the money in one quarter and pay it out the following quarter.

Senator NICKLES. I understand. Thank you very much.

For the record, I should identify Ralph Adkisson who is a member of the Osage tribal council. I thank you very much, and I apologize. I needed to have your name in the record.

And thank you very much too for your comments. I appreciate that.

Our next and final panel that we have: Bill Supernaw, chairman of the Osage County Democratic Central Committee; Vernon Young who is superintendent of the Shidler Public School System; Charles Cushman, executive director of the National Inholders Association; and Crayton Bolton who is chairman of the Friends of the Osage. Mr. Supernaw, do you care to be first?

STATEMENT OF BILL SUPERNAW, CHAIRMAN, OSAGE COUNTY DEMOCRATIC CENTRAL COMMITTEE

Mr. SUPERNAW. Thank you, Senator Nickles and Boren. Could we let the record show that none of the permanent members of the committee are here?

Senator BOREN. Senator Nickles is.

Mr. SUPERNAW. Oh, Senator Nickles?

Senator BOREN. Senator Nickles is a member of the committee.

Mr. SUPERNAW. And I'm speaking to Senator Nickles and Boren, and that since emotions won't be too important, I will display none except nervousness.

My name is Bill Supernaw and I'm a lifelong resident of Osage County. I'm the chairman of the Democratic Party of Osage County.

I will submit or have submitted a written testimony of 11 pages.

Senator NICKLES. We will include all of the written statements in the record in full.

Mr. SUPERNAW. OK, so I'll just scan through this because a lot of this redundant to what we've heard here today.

There is a few things that I'd like to point out, and one of those things is that the idea advanced by Mrs. Mattingly a while ago. I have advised both of your staffs of this earlier, and the reaction was that the Osages didn't ask for that or they have never proposed that. Well, they didn't propose this bill either. But the idea that I advanced was that the Osages own the surface. I think the funding vehicle is already in place through the affirmative action legislation.

Senator BOREN. How would that work?

Mr. SUPERNAW. How would it work?

Senator BOREN. Yes.

Mr. SUPERNAW. I don't know exactly how it would work, but in my mind it could be handled through grants and loans. Now, I'm talking for a lot of people that haven't authorized me to say this, but my thinking is that if the Osages are afraid of lost mineral production, then the payments could be very small and probably less

than the mineral production that they would lose. So, that might satisfy them. Regulations could continue as they are.

Tourism, if there is any, could continue because it could be carried on Federal maps as a reservation. Nothing would be changed. The only people that I think would be unhappy with it would be the Sierra Club and the environmentalists. But left up to them, they'd turn the whole world into a wilderness. But I think something along those lines might be worked out.

I have outlined in my testimony some of the reasons that opposition was slow to build in Oklahoma. I've outlined how news stories edited out any reference to other groups besides the Osages. I don't know whether that was by design or by accident, but the effect was the same. A lot of people in Oklahoma thought the Osage Indians stood alone in opposing this.

The Republican Party of two counties passed resolutions against this proposal as it stands now. The Democratic Party passed a resolution in our county, in our district, as you know, at the State. The State overwhelmingly supported us in this.

Last Friday, for instance, as far as molding public opinion, the Tulsa World published full-page color photographs of animals in Osage County. And it depicted Osage County of some kind of a Garden of Eden populated by America's happiest animals. But they never mentioned in that paper what is going to happen to those animals at the first prairie fire through ungrazed prairie. That is one of the main objections of the Farm Bureau, and I've attached their statement to my testimony.

We would like to have field hearings in Pawhuska, as I've indicated to both of you gentlemen before. One of the reasons is because the opposition is building and you need to see it firsthand I think. You also need to see the emotions involved and the people that are there, people that strongly oppose this, people that fear for their livelihood, their incomes and their families. I had hoped to speak to some of the committee members firsthand. Maybe we could influence them and maybe some of them could come to Oklahoma.

The whole premise behind this plan has been I think that the land is for sale by willing sellers, but as of last Friday, I think one of the key ranches has gone into the hands of a seller who indicates that he is not a willing seller.

Senator NICKLES. Which one is that?

Mr. SUPERNAW. Frederick Drummond purchased I think the ranch of Dickie Drummond.

Senator BOREN. Frederick purchased the ranch of Fred A. and Frederick is not willing to sell?

Mr. SUPERNAW. That's what he indicated to the local newspaper. The statement is included in my testimony.

The other fear I think a lot of people have is that the land value now is about $200 an acre. There has been no efforts made to establish the price of that land now by the taking of options. Someone said the Park Service can't do it, but it has been done by the Wilderness Society before. And it would seem to me that that would be one of the major objections because the way—the sequence of events here—the legislation would be passed first and create a market and without condemnation. We're afraid that the Govern-

ment would end up paying two or three times for the land what it's actually worth. Any willing seller could become an unwilling seller at any time. No steps have been taken, I understand, to lock that land in.

[The prepared statement of Mr. Supernaw follows:]

OSAGE COUNTY DEMOCRATIC CENTRAL COMMITTEE
Bill Supernaw, Chairman Beth Pace, Sec-Treas. Angie Altaffer, Co-Chairman

MAY 23, 1988

SENATOR DALE BUMPERS
U. S. SENATE
WASHINGTON, D.C. 20510

DEAR SENATOR BUMPERS:

I WISH THE FOLLOWING TO INCLUDED IN THE RECORD AS MY WRITTEN TESTIMONY FOR THE HEARING MAY 26 ON THE TALLGRASS PRAIRIE PRESERVE IN OSAGE COUNTY, OKLAHOMA.

MY NAME IS BILL SUPERNAW AND I AM A LIFELONG RESIDENT OF OSAGE COUNTY. THE BLOOD OF 4 AMERICAN INDIAN TRIBES, ENGLISH, GERMAN, IRISH, AND OTHER EUROPEAN COUNTRIES FLOWS THROUGH MY VEINS. I AM A DECENDENT OF PLAINS AND WOODLAND INDIAN TRIBES, OILMEN, RANCHERS, FARMERS, LABORERS, GOVERNMENT EMPLOYEES, OUTLAWS AND LAWMEN. I BELIEVE THAT MY ANCESTRY, CULTURE AND ATTITUDES ARE A REASONABLE COMPOSITE OF THE PEOPLE OF OSAGE COUNTY. I AM THE CHAIRMAN OF THE DEMOCRATIC PARTY OF OSAGE COUNTY.

AT OUR COUNTY CONVENTION ON APRIL 9 THIS YEAR WE PASSED BY A 95% MAJORITY A RESOLUTION OPPOSING THE ESTABLISHMENT OF THE PRAIRIE PRESERVE IN OSAGE COUNTY. THE REPUBLICIAN PARTY IN OUR COUNTY AND IN THE ADJOINING WASHINGTON COUNTY HAD PREVIOUSLY PASSED SIMILAR RESOLUTIONS. WE TOOK THE RESOLUTION TO THE 1ST DISTRICT CONVENTION IN TULSA AND IT PASSED THERE UNANIMOUSLY ON APRIL 23. WE THEN SUBMITTED THE RESOLUTION AT THE OKLAHOMA STATE DEMOCRATIC CONVENTION IN OKLAHOMA CITY AND IT PASSED OVERWHELMINGLY ON MAY 14. (ATT 1)

YOU MAY WONDER WHY THESE RESOLUTIONS PASSED IN OKLAHOMA WHEN YOU ARE NOW BEING TOLD HERE TODAY BY SOME WITNESSES THAT THE MAJORITY OF OKLAHOMANS WANT THIS PRESERVE. YOU MAY BE TOLD THAT THOUSANDS OF PEOPLE SIGNED PETITIONS IN FAVOR OF THE PRESERVE. I HAVE ATTACHED A LETTER SHOWING HOW MANY OF THE SIGNATURES WERE OBTAINED. (ATT.2) OUR INVESTIGATION REVEALED THAT MANY SIGNERS HAD BEEN TOLD THAT THE PEOPLE OF OSAGE COUNTY WERE IN FAVOR OF THE PRESERVE. WHEN WE TOLD THEM OF OUR OPPOSION THEY QUICKLY CHANGED THEIR MINDS AND AT THE STATE CONVENTION MANY SCRATCHED THEIR NAMES OFF A PETITION BEING CIRCULATED THERE BY THE SIERRA CLUB. THE FALSE INFORMATION WAS DISSEMINATED WIDELY AND PERHAPS INNOCENTLY. EVEN AS RECENTLY AS APRIL, SENATOR BOREN'S AIDE, TRIP HALL, ARGUED WITH ME THAT ALL THE GROUPS MENTIONED IN OUR RESOLUTION WERE IN FAVOR OF THE PRESERVE. HE HAS SINCE CHANGED HIS STORY WHEN REPRESENTATIVES OF THE GROUPS CALLED HIM TO PROTEST.

NEWS COVERAGE GAVE THE IMPRESSION THAT THE OSAGE INDIANS WERE ALONE IN THEIR OPPOSITION TO THE PRESERVE. TULSA WORLD STORIES WERE EDITED SO THAT EDITIONS IN THE LARGE METROPOLITAN AREA ELIMINATED ALL REFERENCES TO GROUPS OTHER THAN THE OSAGE INDIANS. (ATT 3) EVEN WHEN

THE RESOLUTION WAS PASSED AT THE STATE CONVENTION NO MAJOR NEWSPAPERS CARRIED THE STORY AND EVEN AS RECENTLY AS MAY 20 ALL REFERENCE TO THE RESOLUTION WAS EDITED OUT OF THE METROPOLITAN EDITION IN THE WORLD. (ATT 4) WHETHER BY DESIGN OR BY ACCIDENT THE EFFECT WAS THE SAME: THE FALSE IMPRESSION IN URBAN AREAS THAT THE OSAGE INDIANS WERE ALONE IN OPPOSING THE PRESERVE.

LAST FRIDAY'S TULSA TRIBUNE CARRIED FULL PAGE COLOR PICTURES OF OSAGE COUNTY ANIMALS DEPICTED IN SETTINGS THAT MADE THE COUNTY APPEAR TO BE A VIRTUAL GARDEN OF EDEN POPULATED WITH AMERICA'S HAPPIEST ANIMALS. NO MENTION HAS EVER BEEN MADE IN THAT PAPER THAT THESE BAMBI-LIKE CREATURES WOULD LOOK LIKE FRIED CHICKEN AFTER THE FIRST FIRE THROUGH UNGRAZED TALLGRASS PRAIRIE. THE FIRE HAZARD IS ONE OF THE OBJECTIONS OF THE OKLAHOMA FARM BUREAU. (ATT 5)

MARK FREEMAN, PRESIDENT OF THE OSAGE PRESERVATION COALITION HAS BEEN FIGHTING THIS FOR 6 YEARS AND HAS SPENT OVER $20,000 OF HIS OWN MONEY IN OPPOSING THIS PLAN JUST BECAUSE HE BELIEVES IT WOULD BE BAD FOR THE COUNTY. HE SPONSORED A DINNER A FEW YEARS AGO THAT WAS ATTENDED BY OVER 1,200 PEOPLE IN OPPOSITION TO THE PRESERVE AND THE EVENT GOT LITTI NEWS COVERAGE OUTSIDE OF PAWHUSKA. MARK IS PROBABLY THE LEADING AUTHORITY ON THE PLAN BUT COULD NOT ATTEND THE HEARING TODAY BECAUSE HE HAS 1,900 CATTLE TO WORK.

FIELD HEARINGS NEED TO BE HELD IN PAWHUSKA BECAUSE OF PEOPLE LIKE MARK WHO CAN'T ATTEND A WASHINGTON HEARING BECAUSE OF BUSINESS DEMANDS AND THE MUCH LARGER NUMBER OF PEOPLE IN OPPOSITION WHO JUST CAN'T AFFORD TO COME TO WASHINGTON. MANY OF THE OLD AND INFIRM PEOPLE WHO WOULD BE HURT BY THE PRESERVE CAN NOT TRAVEL THAT FAR. WE THINK IT IS CRITICAL THAT COMMITTEE MEMBERS SEE THE OPPOSITION FIRST HAND AND WITNESS THE EMOTIONS INVOLVED. EVEN THOUGH SENATOR BOREN GUARANTEED US ON MAY 3 THAT MEANINGFUL FIELD HEARINGS WOULD BE HELD BY THE COMMITTEE, WE MENTION IT HERE DUE TO A CONCERN RAISED BY AN APPARENT LACK OF COMMUNICATION TO HIS AIDES WHO SEEM TO BE TRYING TO DISSUADE FIELD HEARINGS. (ATT 6)

THE WHOLE PREMISE BEHIND THIS PLAN HAS BEEN THAT THERE WILLING SELLERS AT FAIR MARKET VALUE. OPPONENTS HAVE CONSISTENTLY VOICED THE CONCERN THAT THE PLAN IS A BAIL OUT FOR A FEW LARGE RANCHERS AND THAT THE GOVERNMENT WILL END UP PAYING MORE THAN THE LAND IS WORTH. THE LEGISLATION WILL CREATE AN ARTIFICAL MARKET FOR THE LAND, WHICH IS NOW VALUED AT LESS THAN $200 PER ACRE, AND WITHOUT EMINENT DOMAIN THE GOVERNMENT WILL BE A POOR POSITION TO BARGAIN. (OPPONENTS OF THE PRESERVE DO NOT WANT EMINENT DOMAIN IN THE PLAN UNDER ANY CIRCUMSTANCE AND WE WANT TO MAKE THAT VERY CLEAR.) ALSO THE KEY RANCH IN THE PLAN IS IN ALL LIKELYHOOD NOT FOR SALE AS OF LAST WEEK. (ATT 7)

THE PEOPLE THAT OPPOSE THE PRESERVE HAVE CONSISTENTLY VOICE THE CONCER THAT ONCE ANY PART OF THE PRESERVE IS AUTHORIZED THERE WOULD BE A PUSH TO ENLARGE IT AND THAT THE "DONUT HOLE" APPROACH USED AT THE BIG CYPRE NATIONAL PRESERVE WAS PART OF THE PLAN. PROOF THAT THE OPPONENTS WERE RIGHT SURFACED JUST THIS LAST SATURDAY. THE SIERRA CLUB, LIKE CHILDRE WHO CAN'T WAIT FOR CHRISTMAS, ANNOUNCED IN THE TULSA WORLD THAT THEY WILL ATTEMPT TO ADD 20,000 TO THE PRESERVE EVEN BEFORE THE ORIGINAL ACREAGE IS AUTHORIZED. (ATT 8)

IF THE PRESERVE IS AUTHORIZED AND IT EXPANDS AS PRESSURE ALREADY INDICATES IT WILL, AND THE PARK SERVICE OPERATES AS IT ALWAYS HAS, OIL PRODUCTION WILL CEASE IN THE PROTECTED AREA. THE LOSS TO THE STATE OF OKLAHOMA WILL BE $10 MILLION TO THE GENERAL ECONOMY AND $600 THOUSAND IN GROSS PRODUCTION TAXES NOW GOING INTO OKLAHOMA'S GENERAL FUND. THERE IS NO GOOD EVIDENCE THAT THERE WILL BE ANY SUBSTANTIAL OFFSETTING AMOUNT DUE TO TOURISM. THERE IS LITTLE VISITATION TO THE OTHER GRASSLAND PARKS AND THE ONLY DIFFERENCE EVER MENTIONED IS THAT THIS PRESERVE WILL BE A TALLGRASS PRESERVE AND THE OTHERS ARE MEDIUM AND SHORTGRASS.

PROPONENTS OF THE PRESERVE SAY THAT THE LAND WILL BE PURCHASED WITH MONEY FROM A SPECIAL PARK FUND AND THAT THE COST WILL NOT ADD TO THE DEFICIT. HOWEVER, IT IS MY UNDERSTANDING THAT IF THIS MONEY IS NOT USED FOR LAND PURCHASES IT COULD BE USED TO REDUCE THE DEFICIT. OTHER PROPONENTS SAY TAXPAYER'S MONEY WILL NOT BE USED, THAT IT WILL COME FROM SURPLUS OR EXCHANGES. NO MATTER WHAT THEY CALL IT, IT'S TAXPAYER'S MONEY.

GAO/RCED-88-91BR

TUESDAY, THE PARK SERVICE ISSUED A REPORT THAT REVEALED THAT THEY COULD NOT TAKE PROPER CARE OF THE EXISTING PARKS AND THAT THE GRAND CANYON WAS ON THE TEN MOST ENDANGERED LIST....SO, THEY WANT TO ADD MORE PARKS. MEETING PROBLEMS WITH SOLUTIONS LIKE THAT MAKES ME THINK THAT COMMON SENSE SHOULD BE MOVED TO THE TOP OF THAT LIST.

MANY GROUPS AND INDIVIDUALS OPPOSE THIS PRESERVE FOR MANY DIFFERENT REASONS BUT A COMMON THREAD RUNS THROUGH: NONE BELIEVE THAT LEGISLATIC CAN BE CREATED THAT WILL GUARANTEE PROTECTION TO THE AFFECTED PARTIES. IN ORDER TO WORK, THE LAW WOULD HAVE TO GUARANTEE THAT YOUR OFFSPRING WOULD BE HONEST PEOPLE AND THE PARK SERVICE AND SIERRA CLUB WOULD NOT DO WHAT THEY EXIST ONLY TO DO.

SUPPORTERS OF THE PLAN HAVE FIRED THEIR BEST SHOT. YOU KNOW WHO THEY ARE. THE OPPOSITION IS JUST BEGINNING TO RISE AS A SLEEPING GIANT INDIGNANT AT BEING AWAKENED BY A FAMILAR PEST. EDUCATION, LABOR, AND MINORITIES IN OKLAHOMA HAVE ALLIED WITH THE OPPOSITION. OTHERS WILL FOLLOW BECAUSE THERE'S A LOT OF HARM IN THIS FOR MANY AND A LITTLE FOR EVERYONE.

SIX WEEKS AGO VOCAL AND FORMERLY LATENT OPPOSITION REPRESENTING THOUSANDS FOUND EACH OTHER AT A COUNTY CONVENTION. FOUR WEEKS AGO A HUNDRED THOUSAND UNITED AT A DISTRICT CONVENTION. TWO WEEKS AGO A MILLION JOINED IN OPPOSITION. EVEN NOW A NATIONAL APPEAL IS BEING PREPARED TO GO OUT TO THOSE OPPOSED TO WASTEFUL SPENDING AND UNFAIR TREATMENT OF MINORITIES. NO SEGMENT OF OUR SOCIETY CAN IGNORE THIS WITHOUT WEAKENING THE CAUSE OF FREEDOM FOR THEMSELVES.

THIS PLAN HAS ALL THE ELEMENTS OF ANOTHER ORCHESTRATED MISADVANTURE FOR THE AMERICAN PEOPLE, WHERE AN ALREADY IMPOVERISHED PEOPLE WILL BE MADE POORER BY MISGUIDED LEGISLATION AND A FEW ARE MADE RICHER AT THE EXPENSE OF MANY. IT BEGINS THE FIRST SENTENCE OF ANOTHER PAGE IN THE SHAMEFUL HISTORY OF AMERICA'S TREATMENT OF THE NATIVE AMERICANS

IN THE END, WE MAY DISCOVER THAT THE REAL ISSUE IS NOT THE ESTABLISHME OF A PRAIRIE PRESERVE IN OKLAHOMA, BUT IT IS ALL A METAPHOR FOR A NATION'S SEARCH FOR SELF-RESPECT. WHEN WILL WE STOP TREATING MINORITIE LIKE MINORITIES?

RESPECTFULLY SUBMITTED,

Bill Supernaw

BILL SUPERNAW

ATT. 1

But first the proposal must get past its opposition, which most recently came during the Democratic State Convention.

The convention last weekend adopted an amendment to a resolution, opposing the proposed preserve.

A group of Osage County Democrats actively lobbied the convention to get the section included in the resolution.

It states: "The Oklahoma Democratic Party joins the Osage County Democrats, Osage County Cattlemen's Association, Osage Indian Tribe, oil producers, Osage Preservation Coalition and a majority of Osage County landowners to oppose SB 1967 and HB 3308, concerning the establishment of the Tallgrass Prairie Preserve in Osage County."

The resolution was one of 19 adopted by voice vote which will be presented at the Democratic National Convention later this year.

ATT. 2

3953 NW 58 Terrace
Oklahoma City, 73112
July 22, 1986

Dear Mark,

The Oklahoma Wildlife Federation, as you are aware, has continued to diligently work to establish a Tall Grass Reserve in Osage County.

The Federation is paying informed and "uninformed" people to canvas towns and cities across Oklahoma, asking for donations and signatures on their petition to establish an Osage Preserve.

The young man that canvassed our neighborhood was from Ghana and a Political Science student at C.S.U. He said, his class averaged $10,000 to $12,000 a week in door to door sales. Each student receives $180 - a week and $450 - the student collects weekly and is paid by the Wildlife Federation.

The enclosed advertisement has been in the Daily Oklahoman for some time — been thinking about calling for an appointment + hear their sales pitch first hand.

I strongly believe the possibility of a Preserve in the Osage will be won or lost on the Federal level and all members of the Osage Preservation Coalition should vigorously campaign against it by contacting each member of the Oklahoma Congressional Delegation regularly — even though the proposed Preserve is located in Congressional District No. 5. I felt that Jim Jones was uninformed and not particularly interested in our situation and if elected to the Senate would not be a strong ally.

Thanks much for the enjoyable evening. My family all loved it! — Hopefully it made a "statement" to you.

Have a nice summer.

Lesta (OLIVER)

TULSA WORLD, SUNDAY, MAY 8, 1988

Osage Indian Camp Holds Rally Against Preserve

World's Own Service

PAWHUSKA — About 200 people gathered Saturday at a rally held to organize opposition to the proposed Tallgrass Prairie Preserve.

The rally was held at the Osage Indian Camp here and featured Indian dancing, speeches and a free dinner. It was sponsored by the Osage County Democratic Party and originally was intended to organize Osage Indians politically, said Democratic county chairman Bill Supernaw of Skiatook.

But other groups opposing the proposed federal preserve, which would encompass about 100,000 acres of grasslands north of here, were invited when congressional hearings on legislation that would create the preserve were recently moved up to May 26.

Resolutions opposing a federal preserve north of here were approved at both the Osage County and First District Democratic Party conventions last month.

"That is when we really started to get involved with the Osages on this issue," Supernaw said.

"We wanted to try to get the Osages politically organized for a lot of reasons," he explained. "But one important reason is there are 4,000 Osages of voting age in the county and most of them aren't voting.

"They could be the balance of power in this county," he pointed out.

Supernaw said the rally quickly was expanded in scope last week when the congressional hearings were rescheduled.

"We thought they were going to be in August or September," he said.

Supernaw suggested the hearings were moved up in "a deliberate attempt to keep people from testifying and running this legislation through without active opposition."

He said Sen. David Boren had promised him in a lengthy telephone conversation last week that congressional field hearings would be held in Pawhuska. However, in a letter hand delivered to Supernaw the next day, Boren stated he would request field hearings in Pawhuska.

Supernaw pointed out the resolution opposing the preserve would not have been approved without the active support of several party constituencies, including organized labor, teachers and trial lawyers.

Several Democratic officials spoke at Saturday's rally. They were joined by representatives of the Oklahoma Farm Bureau, Osage County Cattlemen's Association, the Shidler School District and the Osage Tribal Council.

RURAL EDITION

184

TULSA

Osage Camp Holds Rally Against Preserve

World's Own Service

PAWHUSKA — About 200 people gathered Saturday at a rally held to organize opposition to the proposed Tallgrass Prairie Preserve.

The rally was held at the Osage Indian Camp and featured Indian dancing, speeches and a free dinner. It was sponsored by the Osage County Democratic Party and originally was intended to organize Osage Indians politically, said Democratic county chairman Bill Supernaw of Skiatook.

But other groups opposing the proposed federal preserve, which would encompass about 100,000 acres of grasslands north of here, were invited when congressional hearings on legislation that would create the preserve were recently moved up to May 26.

Resolutions opposing a federal preserve north of here were approved at both the Osage County and First District Democratic Party conventions last month.

"We wanted to try to get the Osages politically organized for a lot of reasons," Supernaw said. "But one important reason is there are 4,000 Osages of voting age in the county and most of them aren't voting.

"They could be the balance of power in this county," he pointed out.

Supernaw said the rally was expanded in scope last week when the congressional hearings were rescheduled.

"We thought they were going to be in August or September," he said.

Supernaw suggested the hearings were moved up in "a deliberate attempt to keep people from testifying and running this legislation through without active opposition."

URBAN EDITION

ATT. 3

ATT. 4

RURAL

Key Hearing Set On Tallgrass Issue

By ROB MARTINDALE
World Washington Bureau

WASHINGTON — Witnesses on both sides of an Oklahoma tallgrass prairie preserve issue have been lined up to testify at a Washington hearing, and there is a possibility opposing views might be aired at a Senate field hearing in Pawhuska.

The Washington hearing before a Senate national parks panel is scheduled next Thursday, and Sen. David Boren, D-Okla., has requested a field hearing in Pawhuska during the first week of July.

The proposed National Tallgrass Prairie Preserve would be located in Osage County, west and north of Pawhuska.

Boren in a letter has asked Sen. Dale Bumpers, D-Ark., chairman of the national parks panel, to schedule the Pawhuska hearing.

Boren and Sen. Don Nickles, R-Okla., have introduced Senate legislation to create the preserve. Rep. Mickey Edwards, R-Okla., has introduced similar legislation in the House.

Nickles, Boren and Edwards are scheduled to testify at the Senate hearing, which is expected to be conducted by Nickles.

Most of the proposed preserve would be in Edwards' congressional district with about 10 percent in the district of Rep. Jim Inhofe, R-Okla.

Inhofe isn't on the witness list for the Senate hearing but plans to attend, said an aide. The aide said Inhofe "wants to see what each side has to say" and plans to testify later at a House hearing.

If the preserve attracts tourists as suggested, Pawhuska, in Inhofe's district, would be the primary beneficiary.

But first the proposal must get past its opposition, which most recently came during the Democratic State Convention.

The convention last weekend adopted an amendment to a resolution, opposing the proposed preserve.

A group of Osage County Democrats actively lobbied the convention to get the section included in the resolution.

It states: "The Oklahoma Democratic Party joins the Osage County Democrats, Osage County Cattlemen's Association, Osage Indian Tribe, oil producers, Osage Preservation Coalition and a majority of Osage County landowners to oppose SB 1967 and HB 3808, concerning the establishment of the Tallgrass Prairie Preserve in Osage County."

The resolution was one of 10 adopted by voice vote, which will be presented at the Democratic National Convention later this year.

A spokesman for Nickles said testimony will be received at the Senate hearing next week from at least seven witnesses in favor of the proposal and at least six against it.

Testimony is expected from the Department of Interior, which supports the concept, and from the Osage Tribe, which is opposed to the proposal.

The current witness list also includes:

Joe Williams, Tulsa, Oklahoma Nature Conservancy chairman; Lee Holcombe, Pawhuska, of the Osage Cattlemen's Association; Bransford Shoemate, Pawhuska, of the Tallgrass Prairie Preserve Association; Harvey Payne, Pawhuska, of the Oklahoma Wildlife Federation; Pawhuska Mayor Mike Warhurst.

And Brett Hulsey, Tulsa, of the Sierra Club; Jack Graves, Tulsa, of the Oklahoma Independent Petroleum Association; Vernon Young, Shidler schools superintendent; Ralph Adkisson, Pawhuska, of the Osage Tribe; Charles Cushman of the National Inholders Association; and Crayton Bolton and Stanlee Mattingly of Pawhuska.

Written testimony will be submitted at next week's hearing from Gov. Bellmon, Oklahoma Trappers Association, Oklahoma Department of Wildlife Conservation, Oklahoma Department of Tourism and Recreation, and the Osage County commissioners.

The Osage Tribe has expressed concerns about its mineral rights and other concerns have focused on oil-field production.

"We must protect the interests of oil and gas producers and the mineral owners like the Osage Tribe in any final bill. We must also assure that it does not include eminent domain and only applies to willing (land) sellers," Boren said.

5-11

Key Hearing Slated on Proposed Preserve

By ROB MARTINDALE
World Washington Bureau

WASHINGTON — Witnesses on both sides of an Oklahoma tallgrass prairie preserve issue have been lined up to testify at a Washington hearing, and there is a possibility opposing views might be aired at a Senate field hearing in Pawhuska.

The Washington hearing before a Senate national parks panel is scheduled next Thursday, and Sen. David Boren, D-Okla., has requested a field hearing in Pawhuska during the first week of July.

The proposed National Tallgrass Prairie Preserve would be located in Osage County, west and north of Pawhuska.

Boren in a letter has asked Sen. Dale Bumpers, D-Ark., chairman of the national parks panel, to schedule the Pawhuska hearing.

Boren and Sen. Don Nickles, R-Okla., have introduced Senate legislation to create the preserve. Rep. Mickey Edwards, R-Okla., has introduced similar legislation in the House.

Nickles, Boren and Edwards are scheduled to testify at the Senate hearing, which is expected to be conducted by Nickles.

Most of the proposed preserve would be in Edwards' congressional district with about 10 percent in the district of Rep. Jim Inhofe, R-Okla.

Inhofe isn't on the witness list for the Senate hearing but plans to attend, said an aide. The aide said Inhofe "wants to see what each side has to say" and plans to testify later at a House hearing.

If the preserve attracts tourists as suggested, Pawhuska in Inhofe's district would be the primary beneficiary.

But first the proposal must get past its opposition, which most recently came during the Democratic State Convention.

The convention last weekend adopted an amendment to a resolution, opposing the proposed preserve.

A group of Osage County Democrats lobbied the convention to get the section included in the resolution.

URBAN ED.

The current witness list also includes:

Joe Williams, Tulsa, Oklahoma Nature Conservancy chairman; Lee Holcombe, Pawhuska, of the Osage Cattlemen's Association; Bransford Shoemate, Pawhuska, of the Tallgrass Prairie Preserve Association; Harvey Payne, Pawhuska, of the Oklahoma Wildlife Federation; Pawhuska Mayor Mike Warhurst.

And Brett Hulsey, Tulsa, of the Sierra Club; Jack Graves, Tulsa, of the Oklahoma Independent Petroleum Association; Vernon Young, Shidler schools superintendent; Ralph Adkisson, Pawhuska, of the Osage Tribe; Charles Cushman of the National Inholders Association; and Crayton Bolton and Stanlee Mattingly of Pawhuska.

ATT. 5
PAGE I

May 17, 1988

STATEMENT OF OKLAHOMA FARM BUREAU

on the proposed

TALL GRASS PRAIRIE, OSAGE COUNTY, OKLAHOMA

Oklahoma Farm Bureau has traditionally taken a dim view of acquisition of additional land by the national government.

This bias in favor of individual ownership of land has been sharpened probably by the fact that so much land in the western part of the nation is owned by the national government, and by the growing strength of groups who want to place more land into wilderness or roadless uses, and to greatly expand the areas for national forests and national parks.

We are faced in Oklahoma with demands for additional land to be set aside to provide habitat for endangered species of animals and plants, some of which have not been seen in the state for more than 20 years.

We are currently opposing proposed regulations by the Environmental Protection Agency that would ban the use of certain agricultural chemicals in habitat of endangered animals or plants. Such proposals play with a stacked deck, with unelected federal employees having final authority over the use of land, with a goal of perhaps preserving an animal whose only perceived value is its rarity in that particular site. It may be plentiful in some other area, but once it is placed on the "endangered" list, it is more important than people.

With that bit of philosophical background, we turn to the proposal for a 50,000 acre Tall Grass Prairie in Osage County Oklahoma.

For the record, attached is a copy of a Resolution adopted by the Oklahoma legislature in June of 1987, giving consent to the federal government for acquisition of no more than 50,000 acres, with additional conditions that mineral exploration will continue, under guidelines of the Osage tribe, that in-lieu money be paid to compensate for loss of local tax revenue, and the state Wildlife department will manage hunting and fishing.

Oklahoma Farm Bureau did not support the passage of the resolution, and we continue to express our opposition. We do, however, insist that the resolutions' conditions be observed and repeated in any Congressional document authorizing such acquisition.

We believe the rosy predictions of increased tourist traffic coming to Osage County to drive through the park are not justified. A much scaled down demonstration area and information

ATT. 5
PAGE II

Statement of Oklahoma Farm Bureau
on the proposed
TALL GRASS PRAIRIE, OSAGE COUNTY, OKLAHOMA
Page 2

center would serve that purpose just as well. The average tourist will not drive very far out of his way to see what grass would look like if there were no cattle.

Only those persons with a special attachment to "natural" things will find such a park a drawing card.

Most ranchers in the area of the park are opposed. They have some very practical reasons to be less than enthusiastic about a new wild animal refuge across their fences.

A great deal of testimony from in-holders and private property owners adjacent to public lands is available. Much of it makes the point that these parks and preserves do not make very good neighbors.

Trespass violations increase, vandalism increases and specific to a "grass" park, fire danger would increase exponentially.

Even under normal grazing, there are certain times of the year and certain weather conditions (dry, windy, etc.), which are very conducive to prairie fires. Such fires are difficult to control and have often spread for miles even crossing the Kansas state line. They can destroy every thing in their path, homes, outbuildings, cattle and fences.

We continue to oppose authorization of land for the proposed Tallgrass Prairie Park.

James L. Lockett, President
Oklahoma Farm Bureau

ATT. 6

May 23, 1988

Dear Bill,

I have seen the complete text of a letter sent by Bransford Shoemake to the members of the Tallgrass Prairie Preserve Association. I would attest to having seen this document if necessary. The letter is as follows in its entirety: DATED MAY 13, 1988

"Please find enclosed a copy of a letter which I have mailed to Sen. Boren concerning the holding of local hearings on the establishment of the Tallgrass Prairie Preserve."

"Tripp Hall of Sen. Boren's office has asked that all of us write similar letters expressing our concerns that local hearings not be held. He further said that the reasons should simply be that the hearings in Washington will address all the issues and that local hearings would prove to be too expensive, etc. He said to stay away from saying anything about their being too much friction and opposition here locally.

Please g e t out letters as soon as is possible because all of us know that we do not want local hearings."

T h i s was on the official stationery of the Tallgrass Prairie Preserve, l i s t i n g all of its directors, and signed by Bransford Shoemake.

I oppose this Tallgrass Prairie Preserve and from the beginning of this controversy I have asked for open hearings in this area. I have always maintained that a majority of the citizens of this area do oppose the establishment of this preserve in Osage County and I believe recent events prove that beyond a shadow of a doubt.

It is obvious that the proponents also believe this to be true.

At a time when Sen. Boren is asking for field hearings in Pawhuska it seems as though this group and his aide are working at cross-purposes with him. As a democrat who has voted for and supported Sen. Boren I can only hope that he is not involved in this chicanery.

I believe that you as Chairman of the Osage County Democrats should inform our Senator directly as to these matters.

Sincerely,

Mark Freeman

Mark Freeman, Jr.

ATT. 7

May 23, 1988

FROM:
Nelson Carter
Journal Capitol
Pawhuska, OK. 74056

Dear Bill:

Just a note to inform you of a conversation I had with Fred A. Drummond on the evening of May 19th.

Mr. Drummond has purchased the land west of Pawhuska, along Highway 60, and around Bluestem Lake from the estate of the late Dick Drummond.

As you know, this land was a key part of the Willing Seller land, sought after for the creation of a Tallgrass Prairie Preserve.

Fred A. Drummond told me, by phone, that they, Fred and son, Chuck, had bought the property, because they wanted it and didn't want any one else to have it.

Mr. Drummond also said, that he wasn't a Willing Seller of any Drummond land.

Truly Yours,

Nelson J. Carter

ATT. 8

TULSA WORLD 5-21-88

Additional Acres Sought as Debate Nears on Preserve

Sierra Club representatives said Friday they will attempt to persuade congressmen to add another 20,000 acres to the tallgrass prairie preserve proposed for Osage County.

Senate subcommittee hearings on the proposed preserve are scheduled to begin Thursday. Sen. Don Nickles, R-Okla., will chair the hearing before the subcommittee on public lands, national parks and forests.

As proposed, the preserve would encompass about 49,000 acres northwest of Pawhuska, and another 48,000 acres would be set aside as easement.

Brett D. Hulsey, Sierra Club staffer in charge of the tallgrass project, said the club still wants Congress to consider adding another 20,000 acres that are available from willing sellers.

Those additional acres are located on the eastern section of the Barnard Ranch, the western section of the Adams Ranch, and the Codding Ranch.

The existing prairie proposal includes lands on the western part of the Barnard Ranch, the eastern area of the Adams Ranch, and on the Drummond Ranch. All that property also is available from willing sellers.

Hulsey said introducing buffalo and elk onto the preserve would be easier with the addition of the extra acreage.

Even if the other 20,000 acres are added, the tallgrass preserve still would be the smallest preserve in the national park system, Hulsey said.

J. Michael McCloskey, national chairman of the Sierra Club, said it would be preferable to acquire as much acreage as possible at the outset.

"The general history is that you can come back (and acquire more land), but it usually is incredibly more expensive when you try to piecemeal it," he said.

Senator NICKLES. We appreciate your statement. Can I go to the other panelists? Bill, I wasn't sure if you were finished so we will come back to you in questions.

Mr. SUPERNAW. All right.

Senator NICKLES. Crayton Bolton, chairman of the Friends of the Osage.

STATEMENT OF CRAYTON O. BOLTON, CHAIRMAN, FRIENDS OF THE OSAGE

Ms. BOLTON. Yes. I'm recovering from laryngitis, and I hope you will try to bear with me.

Senator BOREN. If the whole Senate could get laryngitis, we might get the country's business done. [Laughter.]

Senator NICKLES. We will put your statement in the record.

Ms. BOLTON. Well, let me tell you I would have a lot of input along those lines.

Thank you, Senators, ladies and gentlemen. I am Crayton O. Bolton, chairman of Friends of the Osage. We are a group that was formed to actively oppose the proposed tallgrass prairie park in Osage County, OK. We have had meetings and have had petitions drawn up and signed by citizens opposing this park, and if you please, I would very much appreciate it if you would enter these into the record. I don't have enough money to give you each one a copy. So, if you all would kindly look at those, I'd appreciate it.

Now, my words probably won't be remembered, but I simply must comment. As Whetsell said, I could not face my fellow Osages and future generations of mine if I did not speak for my family and for my tribe. They may not appreciate it, however, but I'm talking nevertheless.

As you have heard before, a park proposal would close down production and exploration in the proposed park area, and as you have already heard, this has already had devastating results in oil production and exploration. To include the park area of approximately 50,000 acres, not including the buffer zone, in one of the most oil productive areas is bad enough, but to close the largest unexplored oil reserves in Osage County located under the Barnard Ranch and Adams Ranch is not facing the issue. This final step in denying us our mineral trust will not benefit Osage County or Oklahoma because any economic benefit derived from this park cannot offset this loss of oil production despite all hopeful predictions.

You see before you only a small number of Osages. And you probably wonder why. Because of the low oil production. As you heard a while ago, our payments are very low. Many people donated money just to send some representatives up here to speak to you all. And I am pleading with you to save our people. Yes, we are already a small number of people, but why can we not still be protected by the United States Government? Whopping cranes are protected.

We might not be here now if some ranchers had not got into trouble by overborrowing on their ranches and pressing you all to find somebody to buy their land at a high price. I believe this is a pork barrel project to help these ranchers. And by the way, these ranchers are not all owned by individuals. They are owned by large

family groups, but they really are not totally owned by one individual.

We might not have to be here now if the news media in Oklahoma had not been suppressed. We feel that we have been ignored in our plight in this matter. This pork barrel project is just to help these ranchers, and it is my opinion also that this is a wicked racist plot.

Secretary Hodel and W.P. Mott have vacillated on their choice of locations throughout the tallgrass area. By the way, 11 national grasslands already exist. One is the Black Kettle National Grassland in Oklahoma.

Guthrie, OK, as you well know is a very depressed area. They have redone their downtown location in a theme park manner. I think if these people were approached on this subject, they would be overjoyed and would be 100 percent behind establishing a tallgrass prairie park in Oklahoma. We are not.

And thanks to the Federal Government our land was divided and allotted, thus enabling the white man to purchase Indian lands. If it weren't for the alcohol and the shady deals, these three large ranches would not exist.

Senator Boren, did I understand you to say that you would have field hearings in Osage County?

Senator BOREN. What I have said—'m not a member of this committee.

Ms. BOLTON. Oh, I'm sorry.

Senator BOREN. So, what I have done is write a letter. I discussed this with Mr. Supernaw on the phone and told him I would do so. And what I did is write a letter to Chairman Bumpers requesting field hearings and indicated to him that I would like for him to and have other members of the committee come. If there was no way that he could do that, certainly I will come, and if I do that—Senator Nickles and I have discussed that—I will ask that it be an official hearing and that it be entered into the record of the committee so it would be available to all committee members here to read because I think it is very important.

As you have said, a lot of people can't afford to come to Washington, DC, and shouldn't have to come to Washington, DC, to be heard. And so, I feel we should bring the hearings to you. So, I have made that request and I haven't heard from Chairman Bumpers yet. But I am very hopeful he will grant the request.

Ms. BOLTON. Thank you very much. We certainly do appreciate your concern.

I would like to mention that in 1917 oil production began to become the economic mainstay of Osage County and the surrounding areas, for example, Tulsa, Ponca City and Bartlesville. And since that time it seems that everybody has been designing to take away the Osage mineral trust.

In our war on drugs, the park department has provided ideal spots for dope growers. In James Conaway's book, the Kingdom in the Country, he has charged that the U.S. Forest Service and the Bureau of Land Management have created a big mess. It is a known fact that the dope growers have been a threat to park visitors and to the rangers. There is enough drug dealing in Osage County. Why provide them an ideal spot to grow dope in Osage

County? I'm sure even the proponents of the park would agree with me on that subject.

A park in Osage County would result, of course, in the loss of income to my people and would compel unfortunately many of them to become welfare recipients. I wonder if Osage County can afford this. I really don't believe so. The loss of approximately 35 percent of jobs from oil related industries would further crush the already staggeringly bad economic climate and result in further depopulation. No people, as you well know, means no tax revenues. The schools would definitely suffer in this instance.

My people have already had forced upon them 60,000 acres of lakes by the Corps of Engineers—it is understandable that we are reluctant to trust anybody—thereby usurping our water rights. Soon if we do not own an ark, we will have no home in Osage County. We will become boat people.

I beg you, Congressman, and I plead with you to help save my people. I believe that you are reasonable people, and I really believe that when you have studied all of this that you will agree that there should be no tallgrass prairie park in Osage County.

And I thank you very much.

[The prepared statement of Ms. Bolton follows:]

May 26, 1988
TESTIMONY OPPOSING S-1967
Senate Hearings in the Public Lands, National Parks and Forests
SD-308 Dirksen Senate Office Building
Washington, D. C.

CONGRESSMEN, I am Crayton O. Bolton, Chairman of the Friends of the Osage, a group that was formed in 1983 to actively oppose the Proposed Tallgrass Prairie Park in Osage County, Oklahoma. We have had meetings and had petitions drawn up and signed by citizens opposing this Park, because the Prairie Park means POVERTY to us.

The Park Service proposal would close down production and exploration in the proposed Park area which has already produced devastating results in oil production and exploration. To include in the Proposed Park area of approximately 50 thousand acres, not including the buffer zone, in one of the most oil productive areas in Osage County is bad enough, but to close the largest unexplored oil reserves in Osage County - located under the Barnard Ranch area - is not facing the issue. This final step in denying us our Mineral Trust will not benefit Osage County (or Oklahoma) because any economic benefit derived from a Park cannot offset this loss of oil production - despite all hopeful predictions.

You see before you only a small number of Osages. Why? Because of the low oil production. Many people donated money just to send some representatives. I am pleading with you to save our people.

We might not have to be here now if some of the ranchers had not got in to trouble by over-borrowing on their ranches and pressed these Senators to find someone to buy their land at a high price. This PORK BARREL project is to help these ranchers. And we might not have to be here now if the news media in Oklahoma had not been suppressed. Our Congressional Representatives have ignored our plight in this matter. This PORK BARREL project is to help three ranchers. This is a wicked racist plot.

Secretary Hodel and W.P. Mott have vacillated on their choice of locations throughout the Midwest Tallgrass Prairie (by the way, 11 National Grasslands already exist, one is Black Kettle National Grasslands in Oklahoma).

I do not appreciate threats. W.P. Mott came to Osage County to tell us that he was going to take away our land whether or not we wanted it. I am a land owner and not a willing seller. This land belongs to my people and I hope belongs to their descendents. If this were your land you would be trying to save it too. And, Congressmen, what if this Proposed Tallgrass Prairie Park in Osage County, Oklahoma does not produce the ludicrously high income from Tourists dollars projected by Secretary Hodel and W.P. Mott? Are they willing to pledge their own money to repay Osage County when this money does not materialize? Are you? Their fight in Kansas for a Tallgrass Prairie Park was defeated by Senator Dole who was responsive to his constituancy. And what is the difference between Tallgrass in Kansas and Tallgrass 30 miles south in Osage County? The difference is that it is on Indian Land. Secretary Hodel in his address to the American Legion on February 29, acknowledged that the human suffering statistics in Indian Country are devastating. His conclusion was, though, that spending money to help Indians is not the answer.

Congressmen, spending money for a Tallgrass Prairie Park and breaking treaties taking away our land and water resources is not the answer either, although Secretary Hodel may think it is.

My Osage Prople sold their land in Kansas to buy land in Oklahoma. During September of 1870 my people moved onto their Soverign Nation, mineral rights and all. Land they deliberately chose because of the rocky unproductive terrain. They hoped the land would be so inferior that no white man would want it.

In 1917 oil production began to become the economic mainstay of Osage County and the surrounding areas. For example, Tulsa, Ponca City and Bartlesville. Since that everyone has been designing to take away the Osage Mineral Trust.

In our War on Drugs the Park Department has provided ideal spots for DOPE GROWERS. In James Conaway's book, The Kingdom in the Country, he has charged that the U. S. Forest Service and Bureau of Land Management

have created, "a big mess." It is a known fact that the Dope Growers have been a threat to the Park visitors and to the Rangers. There is enough Drug Dealing in Osage County now. Why provide an ideal spot for them to grow dope in Osage County?

A Park in Osage County would result in a loss of income to my people and would compel many of them to become Welfare Recipients. Can Osage County afford this? No! The loss of approximately 35% of jobs from oil related industries would further crush the already staggeringly bad economic climate and result in further depopulation. No people, as you well know, means no tax revenues. And Schools would suffer.

My people have already had forced upon them 60 thousand acres of lakes by the Corps of Engineers, thereby ursurping our water rights. Soon if we do not own an ARK we will have no home in Osage County. We will become "Boat People."

I beg you, Congressmen, I plead with you to help save my people.

I believe that you reasonable people will agree that all of the above reasons will cause you to decide against a Proposed Tallgrass Prairie Park in Osage County.

Thank you!

Crayton O. Bolton
Post Office Box 71
Pawhuska, OK 74056
(918) 287-2023

cb
Photocopy

Senator NICKLES. Thank you very much. We appreciate your comments and suggestions.

Mr. Cushman.

STATEMENT OF CHARLES S. CUSHMAN, EXECUTIVE DIRECTOR, NATIONAL INHOLDERS ASSOCIATION AND MULTIPLE USE LAND ALLIANCE

Mr. CUSHMAN. Thank you very much, Senator, for allowing our testimony. I will be as brief as possible.

You have heard a lot—and by the way, I want to thank the members of this committee and Senator Boren for the informality with which this hearing is being handled. It is very pleasant and I think it provides an opportunity for more insight, and relaxed testimony certainly makes the witnesses feel more comfortable.

I would like to thank the committee staff for their efforts to accommodate all the people that have come from Oklahoma, and certainly the staffs of you, Senator Nickles and Senator Boren and, with no discrimination intended, especially Congressman Edwards, because in my dealings with this issue for 15 years, over 200 parks visited, as we represent 15,000 people across the United States, I have never met a staff that made more of an effort to get the facts, to learn the details, to know what the problems were.

I congratulate each of you on attempt to write legislation. I can truly say I have not seen legislation written in the last 15 years that made more of an attempt to try to protect the rights of those people inside the area. So I congratulate you.

I am sorry to say——

[Laughter.]

Mr. CUSHMAN. You have got to leave right now, right? Tie him down, somebody, please.

Thank you for national parks. I am not sure the National Park Service is deserving of the opportunity to manage them.

What I have here is a record of General Accounting Office investigations critical of the National Park Service for buying more land than they are supposed to, paying more money for it, not using alternatives to fee acquisition, not paying attention to local government, local landowners, or local communities, buying land they do not need, destroying communities.

And I am going to use a word that is very strong, but I mean every word of it. 105,000 landowners have lost their land to the National Park Service since 1966 in small rural communities across America. We think of that as a cultural genocide.

We would hate to see the Osage Tribe and the landowners and the community of Pawhuska and Osage County fall victim to this kind of situation. I honestly do not think it is possible, as the Park Service presently views itself now, for it to be able to manage a multiple use area. It simply does not have successful experience doing that.

It is not a question of how hard you are trying to protect them. It is simply a question that they—I mean, you show me where we have successful experience. We were all talking about Big Cypress a few weeks ago. We are not talking about it today. Two days ago, the oil men just got kicked out by a lawsuit.

So where is the protection? I understand what you are trying to do to find accommodation here and I welcome that. But the track record is clear.

You know, if they have got 19 DC-10's—I hope nobody is here from McDonnell Douglas. But if they have 19 DC-10's take off and they all crash, but they have got the problem fixed and they want you on the twentieth, you know, that is not a very comforting thought. I think you would rather have somebody else get on there and, if that thing flies, why, you will take a trip.

Anyway, let me go back to my prepared commentary. My father was a ranger for the National Park System. I served as a member of the National Park System Advisory Board. I was on the Student Conservation Corps in the pilot program in the fifties. My son was a Park Service employee.

We deeply care about parks. Many of our members helped create the parks in which we now have to protect them from the government they thought was going to save them.

So this is not a unique situation, to have people up here who live in the area advocating creating the park. I mean, I happen to believe that the only thing that—the environmentalists have admitted—that the only reason we are looking at the Osage Hills now is because we had three willing sellers.

I do not mean to say that there are not beautiful areas there or that it is not worth looking at as protection, it does not need protection, although I would say that I do not think it is threatened.

I think that the Osages and the present ranchers are protecting it, so I do not think it needs the federal government to protect it. I do not know who we are saving it from, because the only reason it is there for you guys to come take a look at is because these guys have done a pretty bang-up job of taking care of it already.

The Tallgrass Prairie has been a goal since the fifties by the environmental groups. It may be a good idea. But with present Park Service management, I am afraid it is an accident looking for ways to happen.

In the process of creating it, the rights and the future of not just the Osage Tribe, but landowners, ranchers, and a whole bunch of others are going to be subjected to a systematic and incremental decay that happens in almost every Park Service area.

I would recommend that, if you are going to go—Senator Bumpers said he was going to go look at 10 of those areas that they talked about where they are behind deferred maintenance. Maybe we ought to take a look at 10 of the areas where the Park Service has used condemnation and talk to people about the effect of that.

We urge the defeat at the present—when I say at the present time, because we see no foreseeable situation that S. 1967 can solve the problems to protect the rights of the Osage Indians.

The Interior Department's responsibility to the Osage for the Osage mineral trust is not being met. And their advocacy of this program and by the Director of the Park Service is in direct violation of the American Indian policy as stated by President Reagan on January 24, 1983. I quote one paragraph:

> In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their

members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

That simply is not possible under present Park Service management. The record if the Park Service gets a foot in the door, you have seen it over and over. I mean, here we have, the ink is hardly dry on your compromise and the Sierra Club is in asking for 20,000 more acres. I mean, when is a deal a deal?

The hole in the donut, as it has been called up there on your map. You may not be aware that in the Big Cypress National Preserve in Florida there was also a place called the hole in the donut. And it was guaranteed it was going to stay in agriculture.

It was one of the most productive per acre areas in the United States. It is in Park Service hands today and none of it is in agricultural production. But that was not intended by the Congressmen that wrote it or the Senators. I do not know if they are still in Congress, some of them that wrote it, but I can assure you that the hole in the donut is now in Park Service hands and is no longer in production.

The Osage and the landowners and the ranchers will become victims, discriminated against because of where they live. These are good stewards. Should we reward them by taking their land?

The Park Service, as I said, is not a multiple use agency.

There are other things in Osage County we need to preserve—the local cowboy and rural culture there. I do not know if we want to do as the Park Service does, come in and condemn in other areas and then keep some of the houses to put craft villages in to show what it was like when the people used to live there.

I mean, that is going on in Cuyahoga Valley, in the Delaware Water Gap, in the Buffalo River. We are renting land out to landowners on the Buffalo River who should have had easements, but did not.

The GAO says they bought almost 100 percent fee acquisition. There were 1,108 landowners there and the Park Service bought 1,100. And now we are finding that the people are suddenly coming to the park and saying: Hey, where are the people?

They were such a valuable part of this area. So now the Park Service is trying to rent land back to farmers so they can show what it was like when the people used to live there. That is not what—I sense that is not what you want for Oklahoma. That is certainly not what we want.

Cost, I will skip over that except to say that I think Park Service history in acquisitions is extraordinary. Cuyahoga Valley was supposed to cost $30 million; it is now up close to $160 million.

Redwood National Park was supposed to cost $250 million. As some of you may know, it is up around $1.4 billion. And is there any facilities for the public to recreate there other than what was there, placed there by the State before the park was created? No.

Santa Monica Mountains was supposed to cost $155 million. The Park Service had in hand at the time it was created eight estimates, according to an inspector general investigation, the lowest of which was $250 million, the highest was $650 million.

I suggest to you that this is not intended by you, I am sure, but this is clearly a bait and switch situation; that the cost of this preserve will be much more.

And tourism. Redwood National Park was supposed to have two million visitor use days by 1984. It had an increase of 39,500 by 1983, and yet they gave up 2,500 jobs to get this tourism economy.

Voyagers National Park, 1.4 million, and they now have 200,000 visitor use days. Canyonlands, 1 million, and they have 100,000 visitors.

Systematically, the promises are being made and the promises are being broken. Please, please do not allow this to happen in Oklahoma.

One of the reasons this is happening, Senator, is the lack of oversight. I am not criticizing or singling you out, but I do not think that the Interior Committee in the House and the Energy Committee here has really carefully looked at the people impacts of creating these areas.

You may look at the dollar signs and some other things, but you do not go out and look at what really happens to the people in these areas.

[The prepared statement of Mr. Cushman follows:]

NATIONAL INHOLDERS ASSSOCIATION

National Office
PO Box 5806 x 1030 Thomson
Sonoma, California 95476 (707) 996-5114

Legislative Office
1909 Pennsylvania Ave. N.W. Suite 301
Washington, DC 20006 (202) 331-0914

AN INHOLDER: Any person owning property or other type of equity interest within the boundary of a federally managed area or who is impacted by the management, regulation of or access to that area
AGENCIES INVOLVED: Forest Service, Corps of Engineers, Park Service, Fish and Wildlife Service, Bureau of Reclamation and Bureau of Land Management

TESTIMONY BY

CHARLES S. CUSHMAN
EXECUTIVE DIRECTOR

NATIONAL INHOLDERS ASSOCIATION (NIA)

AND

MULTIPLE-USE LAND ALLIANCE (MULA)

NATIONAL PARKS SUBCOMMITTEE
ENERGY AND NATURAL RESOURCES COMMITTEE
HONORABLE DALE BUMPERS, CHAIRMAN

Hearing: S-1967, The Proposed Tallgrass Prairie Preserve
May 26, 1988

We appreciate the opportunity to appear here today and share our concerns about the Proposed Tallgrass Prairie Preserve (S-1967) and the economic future for the Osage Indian Tribe and the entire Osage County, Oklahoma.

I am Charles S. Cushman, Executive Director of the NIA as well as MULA. My father was a ranger for the National Park Service and I served very early in the Student Conservation Corps for the Park Service. My son worked for the Park Service in the living history center in Wawona, Yosemite National Park. I served one term as a member of the National Park System Advisory Board.

The National Inholders Association represents those people owning private land or other interests within a federal area or who are impacted by the management, regulation of or access to that area. A large number of our members are not in a park now, but fear losing their land or interests in land, when a new park is created. NIA has over 15,000 members in 50 states and over 200 federally managed areas. There are over 1.2 million inholders nationwide.

Inholders are landowners in National Parks, forests and other federal lands, recreation residence cabin owners and other special use permittees in National Forests, ranchers in areas managed by the Bureau of Land Management and Forest Service, miners on federal lands and many other types rights holders. They are also people who are impacted by the management, regulation of and access to federal areas.

The Multiple-Use Land Alliance was recently formed to support the continued multiple-use and productive contribution of our federal lands as well as private lands. Recreationists, miners, hunters, sportsmen, ranchers, landowners, permittees, handicapped, elderly, and many others will be encouraged to cooperate to support the access and multiple-use of our federal and private lands and to oppose selfish single-use designations that limit access to millions of American families.

Overview

The proposed Tallgrass Prairie Preserve may have an appropriate home in the West. It is certainly not in Osage County, Oklahoma. There are many other areas of "tallgrass prairie" that should be considered before the preserve is forced down the throat of the ranchers, landowners, independent oil producers... and especially the Osage Indian Tribe in Osage County.

The United States in its wisdom has driven the Osage from one area of the country to another several times. Finally the Osage purchased and paid for the ownership of Osage County. Here they were finally able to settle in peace.

They had the wisdom to place their sub-surface mineral rights in Trust for future generations of Osages with the Department of the Interior and now those rights provide a substantial income from oil and gas production that provides basic family support for thousands of Osage families.

But history repeats itself. Now the United States wants to "take" from the Osage again. It is not fair. It is not right. It violates the fiduciary responsibility of the United States to the Tribe through the Osage Mineral Trust.

The Tallgrass Prairie Preserve (S-1967) must not be allowed to become law. It will destroy the unique culture of Osage County. The Park Service, for all the good it does, seems to feel that culture must be over 100 years old to be of any value.

Public Television's "Frontline"
Cuyahoga Valley NRA-June 6, 1983

Don't allow the Osage Hills to become another Cuyahoga Valley. This tragic film documents many broken promises by the Congress and the Park Service. Only 29 homes were to be taken for the park. The law even promised the use of easements. The law didn't mention condemnation. Yet the number of homes purchased is well over 300 and the small community was destroyed.

Unfortunately, this is not an isolated example of how our Park Service areas are being managed. It is rather commonplace. Yet this committee has failed to examine the abuses discussed in this important documentary or how they could be corrected. The loss is to the Park Service. Because Congress failed to provide proper oversight, the Park Service feels it is immune from criticism. Bureaucracies who don't have to compete generally fail to be the best they can be. The Congress, the Administration and yes, even the environmental groups, are cheating themselves out of a better Park Service.

Why The Tallgrass Prairie Preserve Should Be Defeated

The Osage Hills Are Not Threatened

In fact, land that had been tilled is being put back into pasture. There is no threat of development and only the most uninformed promoters of the Tallgrass Prairie Preserve have suggested that this land is threatened.

Interior Department Osage Mineral Trust Responsibility

The Interior Department has a trust responsibility to manage and protect the Osage Mineral Trust for the Tribe and future generations of the Tribe. By advocating the creation of the Tallgrass Prairie Preserve, which threatens the future of the trust, the Interior Department and Park Service appear to be violating their legal responsibilities.

Osages Being Hurt Already--Oil Operators Moving

Independent oil producers say they only get a few barrels of oil each day from Osage County wells. They cannot operate at a profit when faced with increased regulation at the hands of the Park Service. The have heard the complaints made to Congress by the Collier family about their problems with Park Service regulation and environmental group harassment. Already the lease sales are going down as the fear of new regulations cause oil producers to lose confidence and consider alternate sites.

Tallgrass Prairie Could Cost $200 Million

The true cost to the American taxpayer is not spelled out in the Tallgrass Prairie legislation. Bait and switch is what they call it at a department store. Promise low costs to get the customer in, then sell him something much more expensive. The Congress keeps buying and buying and buying, with no effective oversight. This adds to the budget deficit and adds to the terrible fiscal liability faced by this and future generations.

Redwood National Park was supposed to cost $250 million. It will be well over $1.4 billion when completed, if ever. According to an Interior Department Inspector General Investigation, Santa Monica Mountains was supposed to cost $150 million. Yet the Park Service had in hand when the bill passed eight estimates, the lowest of which was $250 million and the highest, $650 million.

When the cost of the land, easements, development, roads, visitor facilities, museum, and probably the acquisition of some or all of the Osage Tribal oil rights, a cost of $150 to $200 million is easy to justify. Especially in the face of the recent announcement by the Sierra Club about acquiring 20,000 more acres and the huge "hole in the donut" with 349 oil wells.

A "hole in the donut" was in the Big Cypress National Preserve in Florida too. It was supposed to be kept for agriculture. But environmental group pressure eventually forced the farmers out. So much for the "hole in the donut."

The Tallgrass Prairie Preserve Will Hurt the Local Economy

Studies of recent parks show local economies do not benefit by new parks. In nearly all recently created Park Service areas, visitation has failed to even come close to expectations. According to the San Francisco Chronicle, Redwood National Park was promised an increase of 2,000,000 visitor use days by 1984 to replace the 2,500 jobs the areas was going to lose. It received an increase of 39,500 by 1983. The local area received a subsidy to help retrain workers who lost their jobs. They tried training loggers to become fry cooks. So much for an expected recreation economy!

Utah citizens were told by a Park Service funded study by the University of Utah that Canyonlands National Park would receive 1,000,000 visitors. It has yet to reach 100,000. Voyageurs National Park was told to expect 1,300,000 visitors within a short time after the park was created. It is hovering around 200,000 visitor use days today. The park is resented because so many timber jobs were lost as well as prize hunting and fishing areas.

And the newest National Park, Great Basin was to bring in hundreds of thousands of visitor to help the little town of Ely, Nevada. It had a National Monument which had averaged between 40-50,000 visitors in recent years. In 1987, after enormous publicity, Great Basin received 65,000 visitor use days according to experts in the area.

The People Of Oklahoma and Osage County
Do Not Support The Tallgrass Preserve

Both the county Republican and Democratic party organizations passed resolutions opposing the preserve. The Democratic statewide organization just passed a resolution urging the defeat of the bill.

S-1967 Cannot Protect The Rights Of The Osage And Other Inholders

There is no question that Congressman Mickey Edwards and his staff have attempted to craft legislation that will protect the rights of the Osage as well and landowners, ranchers and oil producers. Unfortunately, the record says it just isn't possible. The Park Service is not a multiple-use agency. Preservation is the only goal they understand.

Congressman Edwards attempted to prevent condemnation, yet condemnation will be allowed, according to the Environmental Law Review article attached as part of this testimony. Easements can be condemned too.

The Park Service is over its legal condemnation limit on the St Croix River between above St Paul, Minnesota. It is not able to condemn fee title there. It solved the problem by threatening to condemn terribly restrictive easements that included public access over all of a persons property instead of just what was necessary for river access, as the law intended. Landowners are gladly selling "willingly" rather than have nearly all the value of their land taken, leaving them with little resale value, all the liability, and all the taxes.

The Park Service pays little or no attention to the legislative history of areas managed by them. According to the General Accounting Office, they are just as apt to buy land they don't need as land that is critical. Therefore, many condemnations take place that wouldn't if more easements and other alternatives were used.

Inholders Cannot Survive Park Service Management

Inholders are the targets as far as the Park Service is concerned. They are the families in Osage County that will be removed at will by the National Park Service. Either their land will be taken, or their jobs will be taken. The latter is almost worse. If they lose their job, they often cannot afford their home and land. They lose both. At least if they are condemned, they are partially compensated.

The Osage Indians and other Osage County landowners will become victims who are discriminated against because of where they live. They will become second class citizens. These people will be rewarded for taking care of their land by having it taken from them.

Condemnation is a terrible tool often abused in its use by the Park Service. It is vital that any Tallgrass Prairie legislation prohibit in no uncertain terms the use of condemnation.

New $1 Billion Trust Fund (S-2199) Will Help Destroy Osage County

Condemnation must be eliminated from the S-1967 because Congress is now considering a new $1 billion per year dedicated land acquisition trust fund. Certain powerful special interest groups have lobbied to set up their own single-use entitlement program.... the American Heritage Trust. It is curious that under the cover or word-tool called "recreation" these groups actually push legislation such as S-2199, which is anti-recreation. At least for the broad spectrum of the American public. Families, children, handicapped and the elderly are largely locked out of areas created with the Land and Water Conservation Fund. Instead these areas are set aside for the priveledged few who are young enough and healthy enough to enjoy them. The Tallgrass Prairie will be come one of these restricted areas.

Why an entitlement or subsidy? Should we be setting up special interest entitlements for every segment of society? Shouldn't resource preservation and limited use recreation have to stand in line with everyone else during the budget process? Shouldn't wilderness and parks have to compete with other important social priorities in this era of large deficits and negative balance of payments?

Why should the environmental groups get a special deal? They have truly become the priviledged class. The Sierra Club advertises that the median income of its members is $40,300 yet it joins other environmental groups equally as wealthy standing in the front of the line to the door to the federal treasury.

The Tallgrass Prairie Will Receive Poor Maintenance

According to the General Accounting Office, the "non-partisan" investigative arm of Congress, a new report (RCED-88-91-BR) affirms that Park Service superintendents say there is a shortfall in maintenance funding of $1.9 billion. None of the money from S-2199 can go for anything but buying land. No maintenance, no rehabilitation... nothing. Before adding the Tallgrass Prairie to the load, shouldn't we be able to take care of what we already own?

The Tallgrass Prairie Is Political Trading Stock

For those with short memories, the Late Congressman Philip Burton used parks as a tool to achieve great political success in Congress. Now comes the Tallgrass Prairie. The location in Osage County appears to be primarily because three large ranchers needed a Federal bailout from financial difficulties. They have very good political connections.

Don't allow the Park Service and our precious National Parks to become the political trading stock of the 80's and 90's. The Park Service will become the Pork Service as we head into the era of what the Washington Post referred to in 1980 as "one man one park." In the late 70's the Park Service became a dumping ground for open space. The Tallgrass Prairie appears to be the worst kind of "ego-political" park.

Park Service Has Taken The Land Of Over 105,000 Landowners

The Park Service has engaged in the condemnation and destruction of landowners and small communities all across America. 105,000 landowners have already lost their land to the Park Service alone since 1966. Don't allow the people of Osage County and the Osage Indian Tribe to become another Coup on the political warstick of the Sierra Club.

Lack Of Congressional Oversight

The Park Service has been immune from Congressional oversight because it manages nice places. Parks are good in political terms and it is bad to appear to be against parks. The result is a runaway bureaucracy with little or no accountability. The Park Service is supported by groups who intimidate and overwhelm opposition.

The Park Service has little or no oversight. Numerous General Accounting Office reports have criticized the Park Service in particular and other federal agencies for: buying more land than they are supposed to; creating projects with huge cost overruns; not prioritizing their land acquisition so that they buy land they don't need instead of lands intended by Congress; failure to use easements and other cost effective protection alternatives; and failure to pay attention to the needs of local communities, landowners, and local government.

Sample GAO Reports

"Federal Protection of Wild and Scenic Rivers Has Been Slow and Costly" (CED-78-96)
"The Federal Drive To Acquire Private Lands Should Be Reassessed" (CEd-80-14)
"Federal Land Acquisitions by Condemnation--Opportunities to Reduce Delays and Costs" (CED-80-54)
"Lands In The Lake Chelan National Recreation Area Should Be Returned to Private Ownership" (CED-81-10)
"The National Park Service Should Improve Its Land Acquisition and Management at Fire Island" (CED-81-78)
"Federal Land Acquisition and Management Practices" (CED-81-135)
"New Rules For Protecting Land In The National Park system--Consistent Compliance Needed" (RCED-86-16)

S-1967 Still Threatens Condemnation

Use of eminent domain or condemnation must be completely eliminated from fee acquisition and easements in the Tallgrass Prairie Bill. On the St. Croix River the Park Service has exceeded its condemnation limit. It is threatening to condemn easements that include public access over a persons property instead of just river access as the law allows. Landowners are glad to sell "willingly" rather than have nearly all the value of their land taken, leaving them with little or no resale value, but all the liability and taxes.

The Park Service pays little or no attention to the legislative history of areas managed by them. According to GAO, they are just as apt to buy land they don't need as land that is critical. They assume they will buy it all so why plan. Therefore, many condemnations take place that wouldn't if more alternatives to fee title were used.

A court will not examine the taking--it is assumed that if it is for a "public purpose" then it is ok. The power comes with the power to govern. Courts only ask two questions--does the agency have the money and the authority to spend it? They never ask if they have the authority to spend in on that land or at that project.

Therefore, the landowners cannot contest the taking. The Park Service uses condemnation as an abusive tool to intimidate. They know that the only thing that can stop them is Congressional oversight and they have little to fear from that. Many landowners are squashed like bugs without a chance to fight back. Yes, they get paid, and sometimes they even get enough to replace what they had. But what is the price of land you don't want to sell?

This Administration has held down condemnations and funding has not been enough for mass condemnation. The proposed $1 billion trust fund will allow the Park Service to return to the wholesale condemnation era of the late 70's. In 1979, according to a report to Senator Ted Stevens by the Justice Department, of 21,000 condemnations in process nationwide by all federal agencies, the Park Service had over 10,000 of them. That number is skewed somewhat by the thousands of Big Cypress condemnations.

Park Service Declarations Of Taking Major Threat

Declarations of Taking will be possible if S-1967 passes. DT's, as they are called, are used by the Park Service as an abusive tool to intimidate and depress opposition to local land acquisition projects. They give the government immediate title to the property and can be used to force the landowner off the land in 90 days even if he has no other place to go. Many small businesses are destroyed using this tool.

The Congressional committees often approve a DT without ever asking local elected officials or landowners whether a DT is appropriate. Some are, but most are not. S-1967 should carry some very carefully crafted oversight provisions for the use of Declarations of Taking.

The Park Service Doesn't Like Easements

The Park Service doesn't like to use easements which can save large sums of money while limiting damage to the local community. The GAO says that the Park Service objections to easements are more perceived than real. For example, on the St. Croix, (Kettle River Section) the State of Minnesota purchased hundreds of easements at a cost of 30% or less of fee title. On the St. Croix just a few miles away, the Park Service was condemning fee title. They take the easy way out. They don't have to be a good neighbor. They use condemnation.

Uniform Property Acquisition and Relocation Act Doesn't Work

Public Law 91-646, the Uniform Relocation Act is supposed to protect landowners from overly aggressive bureaucracy. IT DOES NOT WORK. The Tallgrass Prairie Bill (S-1967) in conjunction with S-2199, the $1 billion trust fund will turn loose the powerful Park Service land acquisition machine to prey on the Osage Indians and other landowners in Osage County.

Thousands Of Acres Will Be Taken Off The Tax Rolls

S-1967 will remove many thousands of acres from the tax rolls in an already financially depressed area while throwing the burden of supporting necessary community services on other property owners.

Tallgrass Prairie Recommended By Highly Criticized Outdoor Commission

The Tallgrass Prairie Preserve was recommended in secret by the President's Commission on Americans Outdoors (PCAO). The General Accounting Office just released an investigation concluding that the PCAO violated the Federal Advisory Committee Act by writing its recommendations in closed, secret meetings excluding the public and press. Call GAO for free copies of report (RCED-88-65).

Public Promised Recreation--Gets Wilderness And Lock Gates

Most of the federal part of the $6 billion spent by the Land & Water Conservation Fund since 1966 is not available for general public recreation. It has been locked up with people uses generally limited and sometimes eliminated altogether. Recreation is an excuse or a code word to develop public support for preservation projects when the real goal is the elimination of people. The Tallgrass Prairie Preserve is being sold to local people because of its possible tourism benefits. Yet, the legislative history and Park Service management of National Preserves is to exclude people.

105,000 Landowners Have Lost To The Park Service

Park Service land acquisition has led to condemnation and removal of special cultural populations in small communities across America. S-1967 will fund the continuation of this process in Osage County. 105,000 landowners have lost their land to the Park Service alone since 1966.

Park Subcommittee Field Hearings Should Be Held In Osage County

It is very important that field hearings be held in Osage County. Many Osages, landowners and others would like to testify but the cost of going to Washington is high and this is a busy time of year for their struggling economy.

Conclusion

GAO report after GAO report. Newspaper and magazine stories by the hundred. National television shows documenting the horror stories. It is true... terrible things have been done to the American people and their communities in the name of "preservation."

How does this happen?

There are lots of little reasons, and TWO BIG REASONS.

First, our Constitution is written the way it is because the founding fathers knew that big government would always try to expand it's power over those beneath it. It's why we have all those laws about unreasonable search and seizure. Big government, even big corporate government, always tried to get bigger and more powerful.

Second, for many reasons, most of them good, we have a huge and powerful movement for the conservation and preservation of our natural resources in this country. We, the NIA, believe in sensible conservation... some of our volunteers helped found conservation organizations. Others helped establish new national parks.

But this movement, this bureaucracy, is like all the rest. it believes in itself... and its goals... above anything else... including your rights and the rights of every American.

And they are very smart. They know that American politics and politicians depend upon organizations--like the environmentalists--for political support through their publications and for money... money at election time and money to expose them in a good light in their many and large publications and broadcasts of a "non-political" nature.

So they have power and influence. And they are dedicated. Regardless of what they sometimes say, the basic goal of the environmentalists is to "get people off the land." There are many quotes from the leaders of these groups to show that they really want to keep everyone out of as much of the public lands... our land... as they can.

And they don't give a rat for your rights... or my rights. They get most of their money from people who don't depend on the land... who pay their dues and lend their names to "good causes," because its the "right thing to do."

These good people, as many Members of Congress, never think about the human rights being trampled every day in the name of their good cause.

"So what can I do about it?" you ask. That's what I thought when it happened to me. I have a cabin-inholding in Yosemite that the Park Service decided to take. My family had been there for along time, and I didn't believe in simply being tossed out because some burcaucrat said I was in the way.

So a group of us started NIA. And it has become my life.

God has given me health, good friends, and employees, and dozens, even hundreds of intelligent, hard-working, decent people to help me.

And we have made a difference.

Before we were here, the National Park Service had siezed nearly 100,000 pieces of property from American Citizens since 1967. Thousands of others... miners, stockmen, ranchers, farmers, cabin owners, landowners, recreationists, and other users of private lands and federal lands have been told they had to go... that they "didn't belong."

Thousands of people were being deprived of rights and property who had been assured by their government that they could stay. Families of good men and women had to pack their bags and leave. Why? For preservation. Never mind the promises that were made to create the new parks. Forget about the assurances that the new funding would not take their home. Never mind the jobs they lost in the name of "preservation." They had to go.

And so it goes... in hundreds of "preservation" areas across the country. Rare and beautiful cultures and lifestyles are broken up and destroyed. In America a culture must be 100 years old to valued. We're committing "cultural genocide" and Congress doesn't seem to care. But we fight on.

We can't say we have stopped the carnage every time. But we have stopped it, slowed it, made it more fair, and made the bureaucrats think twice about doing it again, just about every time.

In this testimony you have learned how late in 1985, the environmentalists... and three large ranchers who wanted to sell marginal land at about twice its value on the open market... got together to push for the Tallgrass Prairie National Preserve in Osage County, Oklahoma.

And they really didn't care that the Osage Tribe had owned the mineral rights to that land since 1906. In spite of public assurances to the Tribe, the environmentalists openly state that all oil and cattle production should stop.

Concerned Tribal members and the Pawhuska community organized the Osage Preservation Coalition to save these rights... and access rights for everyone who can't walk across an area 11 miles wide by 23 miles long... and, just incidentally, the economy and unique human culture of the county. After all, environmentalists see human culture as "detrimental to nature," and the bureaucrats don't care.

The Osage Tribe asked the NIA to represent them in Washington because we have had a full time office there since 1979 and have a reputation in Congress and the Federal agencies for aggressive and effective political action. We've protected the rights of thousands of people... and we've changed public policy.

The Park Service bureaucrats talk in jargon that makes people feel stupid... and intimidated. They do that without maliciousness... these are not bad people, but they are people. Even ranchers, miners, and truckers have jargon... we all do it... its human.

But it does make it hard on ordinary citizens... and it does make the bureaucrats see the world in a special way. They come to see their actions as part of a huge complex operation of which they are only a part. To them, as to us, their job takes over their life.

Help us keep the system fair... help us protect the rights of rural Americans. Start by remembering the pain and suffering inflicted upon the Osage of yesteryear. Someone once said, "People who do not read history are doomed to repeat it." Remember, the issue is not just a few people in one place, it is the freedom of us all.

We do what we do because we believe that this system, this country, is based on some remarkable ideas, principal among which is that individuals, and individual rights, are important. Our Constitution was designed to protect the individual against the overwhelming power of a huge government which would take away rights and property.

We are Americans who are willing to work for our belief that it is individuals... and individual rights... who make this country important. We must never allow the single-use people to make their world better at the expense of the rights of all Americans. Thats what this country is about.

Please... we cannot afford to buy all the nice places in this country. Try making the Osage and their neighbors into partners... not enemies. S-1967 will not help this country... it will help destroy the fabric of the culture and financial base of the Osage Indian Nation and many other citizens that live in Osage County.

Attached as part of this testimony:

1. Sierra Club Advertisement selling the demographics of Club Members.

2. Parks, People, and Private Property: The National Park Service and Eminent Domain, by Steven A. Hemmat. Published in Environmental Law, Northwestern School of Law. Portland, Oregon 1985

... a new program to help treat the homeless.

Tulsa World - May 21, 198

Additional Acres Sought as Debate Nears on Preserve

Sierra Club representatives said Friday they will attempt to persuade congressmen to add another 20,000 acres to the tallgrass prairie preserve proposed for Osage County.

Senate subcommittee hearings on the proposed preserve are scheduled to begin Thursday. Sen. Don Nickles, R-Okla., will chair the hearing before the subcommittee on public lands, national parks and forests.

As proposed, the preserve would encompass about 49,000 acres northwest of Pawhuska, and another 48,000 acres would be set aside as easement.

Brett D. Hulsey, Sierra Club staffer in charge of the tallgrass project, said the club still wants Congress to consider adding another 20,000 acres that are available from willing sellers.

Those additional acres are located on the eastern section of the Barnard Ranch, the western section of the Adams Ranch, and the Codding Ranch.

The existing prairie proposal includes lands on the western part of the Barnard Ranch, the eastern area of the Adams Ranch, and on the Drummond Ranch. All that property also is available from willing sellers.

Hulsey said introducing buffalo and elk onto the preserve would be easier with the addition of the extra acreage.

Even if the other 20,000 acres are added, the tallgrass preserve still would be the smallest preserve in the national park system, Hulsey said.

J. Michael McCloskey, national chairman of the Sierra Club, said it would be preferable to acquire as much acreage as possible at the outset.

"The general history is that you can come back (and acquire more land), but it usually is incredibly more expensive when you try to piecemeal it," he said.

May 22 1988 Tulsa World

Environmental Groups Fight Florida Drilling

NAPLES, Fla. (AP) — Oil drillers have been told to tear down th... equipment and get out of Big Cypress National Preserve after con... vation groups protested that exploration would damage the sensi... lands.

The preserve covers cypress swamp, hardwood hammocks ... grass prairie in southwest Florida adjacent to the Everglades N... al Park.

The order, issued last week by the U.S. Justice Department, resulted from a suit filed by the Wilderness Society, the Sierra Club and five other environmental groups arguing that the federal government pushed for drilling despite unresolved environmental concerns.

Shell Western Energy and Petroleum, a subsidiary of Shell Oil Co., began exploration this month inside the 570,000-acre preserve by drilling holes for seismic testing.

Shell spokeswoman Mary Dokianos has said the government decision will put 100 employees out of work and $1 million worth of equipment will have to be dismantled.

The company will probably continue to apply for rights to explore for oil north of the preserve on land that will eventually become part of the preserve under legislation signed by President Reagan last month, Dokianos said.

Until the government actually buys the land, the National Park Service can't regulate oil companies wanting to explore there.

But representatives of the Sierra Club say they will fight to keep Shell from exploring in the expansion area too.

Exhibit #19

More than just a good cause.

And for the first time the membership file of 250,000 is available on the rental market. The Sierra Club has a proud history of accomplishments. From their early victories in saving Yosemite to their role in stopping the damming of the Grand Canyon, to their insistence on the creation of the Clean Air and Water Acts and the formation of a Superfund to clean up toxic waste dumps, the Sierra Club victories represent the major national parks and environmental protection legislation of the twentieth century.

The majority of the file is generated by direct mail and this list should be successful for a wide variety of mailers attempting to reach a well-educated, affluent direct mail market.

Demographics

57.3%	MALE
42.7%	FEMALE
51.1%	MARRIED
40.3	MEDIAN AGE
96%	ATTENDED COLLEGE
34.3%	EARN $50,000 +
$40,300	MEDIAN HOUSEHOLD INCOME
87.8%	HOLD PROFESSIONAL MANAGERIAL JOBS

Names in the News | California, Inc.

530 Bush Street
San Francisco, Ca 94108

Members Direct Mail Marketing Association

For more information on this list or any of our more than 500 exclusives . . .

Name _____

Company _____

Street _____

City _____ State _____ Zip _____

Telephone _____

Names in the News/California, Inc.
530 Bush Street • San Francisco, CA 94108 • (415)989-3350

Northwestern School of Law
of Lewis and Clark College

ENVIRONMENTAL LAW

Environmental law. v. 1-

spring 1970-

Portland, Or., Northwestern School of Law
v. 23 cm.

1. Environmental law—U.S.—Periodicals.

I. Northwestern School of Law.

K5.N85 344'.73'04605 75-31918
ISSN 0046-2276

Cite as 16 ENVTL. L. ___ (1986)

Except as otherwise expressly provided, the author of each article in this issue has granted permission for copies of that article to be made and used by nonprofit educational institutions provided that the author and *Environmental Law* are identified and that proper notice of copyright is affixed to each copy. This permission is conditioned on the user giving notice to *Environmental Law* of each use.

Environmental Law is published by the students of the Northwestern School of Law of Lewis and Clark College in Fall, Winter, Spring, and Summer. The views expressed in this volume do not necessarily reflect those of the editorial board. *Environmental Law* welcomes responsible comment from all sides of any environmental legal issue. Manuscripts submitted to *Environmental Law* will not be returned unless accompanied by a self-addressed, postage paid envelope. Citations conform with THE HARVARD LAW REVIEW ASS'N, A UNIFORM SYSTEM OF CITATION (14th ed. 1986).

Address manuscripts and subscription orders to Environmental Law, 10015 S.W. Terwilliger Blvd., Portland, Oregon 97219. Subscription rates are $20.00 per year, $8.00 per issue; foreign rates are $24.00 per year, $10.00 per issue. Subscriptions are renewed annually unless instructions are received to the contrary. Change of address notifications should include old address and new address, with zip code. Please notify our office one month in advance of effective date to insure delivery. All back issues should be ordered from Fred B. Rothman & Co., 10368 West Centennial Road, Littleton, Colorado 80127. Back issue rates are $10.00 per issue (volumes 4-15), $12.50 per issue (volumes 1-3). For bound volume rates inquire to Rothman directly.

The cover is a scene along the northern Oregon coast, looking south from Ecola State Park toward Cannon Beach and Haystack Rock.

Environmental Law is printed on 40% recycled paper.

Copyright © 1986 by Environmental Law.

Member of the National Conference of Law Reviews

Printed by Darby Printing Co.
715 W. Whitehall, S.W., Atlanta, Georgia 30310

COMMENT

PARKS, PEOPLE, AND PRIVATE PROPERTY: THE NATIONAL PARK SERVICE AND EMINENT DOMAIN

BY

STEVEN A. HEMMAT*

Private property serves as a major source of land in the creation, development, and growth of national parks in the United States. The National Park Service relies upon various acquisition methods and alternatives, such as fee simple purchases, donation of land, exchanges of land, positive and negative easements, zoning restrictions, and other governmental regulations. Additionally, the general Condemnation Act of 1888 authorizes officers of the National Park Service to exercise condemnation authority whenever they are empowered to acquire real estate. This Comment examines the development of land acquisition policy, acquisition authority, and the processes of general land acquisition and condemnation. A short survey of several national park areas follows. The author concludes that the grant of broad condemnation power is an unsatisfactory delegation of authority to unelected officials. Granting condemnation power to allow for the inclusion of private property into national park units must be done by Congress on an individualized basis and adopted through the democratic political process. Several statutory and administrative reforms are proposed.

---

* J.D. 1986, Northwestern School of Law of Lewis and Clark College; B.A. 1983, Whitman College. The author gratefully acknowledges Ron Arnold of the Center for the Defense of Free Enterprise, Grace Sheppard and Willis Kriz of the NPS Land Resources Division, and Warren Brown of the NPS Division of Park Planning and Special Studies for their assistance in the preparation of this Comment.

I. INTRODUCTION

Until 1959, Congress carved the national parks primarily out of federal public domain lands. State governments, private philanthropists, and other federal agencies transferred additional lands to the National Park Service (NPS).[1] This pattern changed with the authorization of the Minute Man National Historical Park in 1959[2] and the Cape Cod National Seashore in 1961.[3] In both cases, Congress authorized the purchase of predominantly private land to serve as the basis of the park. In contrast to the "old parks"[4] policy of eventual acquisition of private inholdings, the "new parks"[5] policy was acquisition of all privately-owned lands within park boundaries,[6] in some cases using the power of eminent domain.[7] Despite the fact that the 1983 Land Protection Plan policy has since clarified and stressed alternatives to outright fee acquisition,[8] condemnation as a method of acquiring private land for national park units continues up to the present

---

1. STAFF OF HOUSE SUBCOMM. ON PUBLIC LANDS AND NATIONAL PARKS, LAND ACQUISITION POLICY AND PROGRAM OF THE NATIONAL PARK SERVICE, 98th Cong., 2d Sess. 3 (Comm. Print 1984) (84 C.I.S. H442-5) [hereinafter HOUSE REPORT].

2. 16 U.S.C. § 410s-410x (1982).

3. 16 U.S.C. §§ 459b-1 to 459b-8 (1982).

4. "Old parks" refers to those units established before July 1959. "New parks" are units established after 1959. *See* Revised Land Acquisition Policy, 44 Fed. Reg. 24,790-92 (1979).

5. *Id.*

6. Professor Joseph Sax, a noted authority on parks, believes that park acquisition policy should not distinguish between old and new parks. He states a policy should

> only distinguish: (1) between lands needed by the parks for basic resource protection, administrative purposes, or visitor use, which should be acquired in fee; and those where the only need is to insulate basic resources or uses, where development rights or easements or some other lesser interest should be acquired; and (2) between lands where potentially incompatible use requires acquisition to protect the parks, and those lands where . . . incompatible uses should be tolerated.

SAX, *Buying Scenery: Land Acquisitions for the National Park Service*, 1980 DUKE L.J. 709, 715, 737-38 (1980). Perhaps from a resource protection standpoint the Professor's distinction makes perfectly good sense. However, pressure groups which defend the rights of park inholders (*e.g.*, the National Inholders Association) could make the adoption of such a policy a political impossibility. *Id.* at 739.

7. This does not imply that condemnation was *never* exercised in the creation of "old parks." *See, e.g.*, 16 U.S.C. § 47e (1982).

8. Land Protection Plans, 48 Fed. Reg. 21,124-25 (1983).

day.[9]

The "taking clause" of the fifth amendment places a limitation on the inherent sovereign power of eminent domain[10] by providing that "private property [shall not] be taken for public use without just compensation."[11] While the NPS Organic Act does not specifically vest the power of eminent domain in the agency,[12] Congress has delegated a broad power of eminent domain[13] to the NPS through the Condemnation Act.[14] In a significant decision

---

9. Park "units" include lands authorized in Title 16 of the United States Code, such as national parks, preserves, monuments, memorials, historic sites, historical reserves, recreation areas, seashores, lakeshores, and battlefield parks. The National Park Service currently administers over 79 million acres of land in 337 units throughout the United States. HOUSE REPORT, *supra* note 1, at 2; telephone interview with Grace Sheppard [hereinafter interview with Sheppard], Deputy Chief of the Land Resources Division, NPS (Oct. 18, 1985). In addition, this Comment will use the words "eminent domain" and "condemnation" interchangeably.

10. "It [eminent domain] does not require recognition by constitutional provision, but exists in absolute and unlimited form . . . . The concept of the power is an inherent attribute of sovereignty." J. SACKMAN, NICHOL'S THE LAW OF EMINENT DOMAIN, §§ 1.14, 1.3 (rev. 3d ed. 1985) [hereinafter NICHOL'S].

11. U.S. CONST. amend. V, cl. 5.

12. The NPS Organic Act reads:

> The service thus established shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations thereinafter specified . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same . . . for future generations.

16 U.S.C. § 1 (1982).

13. "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ." U.S. CONST. art. IV, § 3, cl. 2.

14. When an officer of the Government has been . . . authorized to procure real estate for the erection of a public building *or for other public uses*, he may acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the Attorney General of the United States, upon every application of . . . such . . . officer, shall cause proceedings to be commenced for condemnation within thirty days from receipt of the application at the Department of Justice.

40 U.S.C. § 257 (1982) (emphasis added). The original purpose of the bill was to give the option of condemnation of sites for public buildings in the cases where the government could not acquire the property on reasonable terms by contract. H.R. REP. No. 409, 50th Cong., 1st Sess. 1 (1888) (88 C.I.S. H2599). *See infra* note 116 and accompanying text.

interpreting the Condemnation Act, the U.S. Supreme Court stated that it does not impose:

> any limitations upon the authority of the officials designated by Congress to exercise its power of condemnation . . . . Far removed from the time and circumstances that led to the enactment of [the Act] in 1888 . . . this Court must be slow to read into [the statute] today unexpressed limitations restricting the authority of the very officials named in the [Act] as the ones upon whom Congress chose to rely.[15]

The NPS is therefore empowered to exercise condemnation power at *all* national park units unless specifically prohibited. Curiously, Congress has also granted eminent domain power to some park units under their respective authorizing acts within title 16 of the United States Code.[16]

This Comment discusses the development of acquisition policy, acquisition authority, and the process of land acquisition (including condemnation) within the National Park System. A limited survey of several national park areas follows and analyzes both effective and unsuccessful attempts by the NPS to utilize a variety of land acquisition and protection tools. Due to the false expectations of individual landowners and the lack of a uniform policy standard to address the use of eminent domain within the national parks, park managers possess wide discretion which unnecessarily increases the amount of conflict and tension existing in condemnation actions. The root of the problem lies in the broad eminent domain authority granted to those officers under the general Condemnation Act of 1888.[17] This Comment concludes with a proposal for several important statutory and administrative reforms intended to alleviate the current situation.

---

15. United States v. Carmack, 329 U.S. 230, 236 (1946), *reh'g denied*, 329 U.S. 834 (1947); Note, United States v. Carmack, 27 B.U.L. Rev. 229 (1947). *But see* Nichol's, *supra* note 10, at § 3.21(4) ("The right to exercise the power of eminent domain must be conferred in express terms or by necessary implication . . . . Authority to *establish* or *construct* does not imply authority to *condemn*.").

16. *See infra* note 112.

17. 40 U.S.C. § 257 (1982).

II. Land Acquisition by the National Park Service

A. *Development of Acquisition Policy*

In 1968, the National Park Service (NPS) began to develop formal policies for the acquisition of private lands.[18] One NPS policy, adopted in 1979,[19] made a distinction between inholdings (non-federal lands within the boundaries of a park existing before July 1959) and other lands. In contrast to the "old park" policy of *eventual* acquisition, the "new park"[20] policy was generally one of *prompt* acquisition of all privately-owned lands within park boundaries. Residents on the acquired properties were allowed to retain a life estate or estate for a period of years as long as the use of the land did not threaten park resources.

Between 1979 and 1981, the General Accounting Office (GAO) published a number of reports which blasted the NPS for acquiring too much land in fee rather than relying on alternative means of land protection.[21] The reports were highly controversial and sparked a discussion about alternate ways to protect fully the National Park System, prevent hardships on property owners, and make the most cost-effective use of federal funds available for park acquisition.[22]

In May of 1982, the Department of the Interior published a

---

18. The Administrative Procedure Act (APA) exempts rulemaking procedures from "matter(s) relating to agency management or personnel or *to public property*." 5 U.S.C. § 553(a)(2) (1982) (emphasis added). However, NPS acquisition policies follow procedures under the Interior Departmental Manual (DM), which recommends a minimum public comment period of thirty calendar days after the date of a proposed rule's publication in the Federal Register. 318 DM 6.4D, No. 2137 (June 30, 1982).

19. Revised Land Acquisition Policy, *supra* note 4. *See generally* Lambert, *Private Landholdings in the National Parks: Examples from Yosemite National Park and Indiana Dunes National Lakeshore*, 6 Harv. Envtl. L. Rev. 35, 38 (1982).

20. Revised Land Acquisition Policy, *supra* note 4.

21. *See* Comptroller General of the United States, The Federal Drive to Acquire Private Lands Should be Reassessed, CED-80-14 (Dec. 14, 1979); Comptroller General of the United States, Federal Land Acquisitions by Condemnation—Opportunities to Reduce Delays and Costs, CED-80-54 (May 14, 1980); U.S. General Accounting Office Report to Senator Ted Stevens, Federal Land Acquisition and Management Practices, CED-81-135 (Sept. 11, 1981).

22. House Report, *supra* note 1, at 5. *See infra* note 35.

new final policy statement entitled "Use of Federal Portion of the Land and Water Conservation Fund."[23] In response to this policy, the 1979 land acquisition policy and guideline was withdrawn,[24] and new policy implementation instructions went into effect on May 11, 1983.[25]

Under the new policy, a "Land Protection Plan" (LPP) must be prepared by the appropriate superintendent for each unit in the National Park System that contains private or other non-federal land within its boundaries. Park superintendents were to complete the LPPs by September 30, 1985.

Under the LPPs, each superintendent was required to determine what land or interests in land need to be in public ownership and what means of protection other than acquisition are available to achieve unit purposes as established by Congress. Additionally, the LPPs were to be used to inform landowners about NPS intentions to buy or protect land through other means within the unit, help managers identify priorities for making budget requests and allocating available funds to protect land and unit resources, and find opportunities to help protect the unit by cooperating with state or local governments, landowners, and the private sector.[26] Although not all of the LPPs were completed by the expected completion date, most of the LPPs for the active units (those in the process of acquiring land) were completed by the deadline.[27]

B. Acquisition Authority

Authority for general parkland acquisition comes from several sources, including the Land and Water Conservation Fund Act,[28] and the Uniform Relocation Assistance and Real Property Act.[29] Additional authority emanates from the specific acts which

---

23. *See* 47 Fed. Reg. 19,784 (1982).

24. *See* 48 Fed. Reg. 85 (1983).

25. Land Protection Plans, *supra* note 8, at 21,121.

26. *Id.* at 21,123.

27. Telephone interview with Warren Brown, Program Analyst for the Division of Park Planning and Special Studies and co-author of Land Protection Plans (Oct. 28, 1985).

28. 16 U.S.C. §§ 4601-4 to 4601-11 (1982).

29. 42 U.S.C. §§ 4601-4655 (1982).

established each park unit.[30] A brief overview of the first two acts is beneficial to understand the process by which parks are created within the National Park System.

The Land and Water Conservation Fund Act of 1965 established the Land and Water Conservation Fund (Fund), which provides the majority of funds for the federal acquisition of park and recreational lands.[31] The Fund is currently authorized at $900 million per year through 1989,[32] although expenditure of money from the Fund is predicated upon the action of Congress.[33] After the budget for the Fund is approved by Congress, not less than forty percent can be allocated for federal acquisition. The remainder is to be used to match funds with the states in their planning, acquisition, and development of state and local parks.[34] Due to severe budget cuts, the future viability of the Fund for federal park acquisition is in serious question.[35]

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Relocation Act)[36] is applicable to all federal land purchases and confers several benefits upon owners whose lands have been acquired by federal agencies. Under the Reloca-

---

30. HOUSE REPORT, *supra* note 1, at 1. *See also* text accompanying note 12.

31. 16 U.S.C. §§ 4601-4 to 4601-11 (1982); Glicksman & Coggins, *Federal Recreational Land Policy: The Rise and Decline of the Land and Water Conservation Fund*, 9 COLUM. J. ENVTL. L. 125 (1984); HOUSE REPORT, *supra* note 1, at 3.

32. 16 U.S.C. § 4601-5(c)(1) (1982). Of the over 2.8 million acres which have been purchased by federal agencies, the National Park Service acquired nearly 1.5 million acres of this land at a cost of almost $2 billion between 1965 and 1983. Adding the land the NPS acquired through transfer and exchange from federal agencies, the total amount of acreage increased to almost 44 million acres. Glicksman & Coggins, *supra* note 31, at 125; HOUSE REPORT, *supra* note 1, at 4, 86-87.

33. 16 U.S.C. § 4601-6 (1982). *See also* Glicksman & Coggins *supra* note 31, at 138-39.

34. 16 U.S.C. § 4601-8(b) (1982).

35. The relevant sections of the 1987 Reagan budget proposal, recently approved by Congress, will drastically curtail Park Service Fund land acquisition authority. Pub. L. No. 99-500, Pub. L. No. 99-591. With an unappropriated budget authority balance of 4.3 billion dollars estimated to exist in the Fund by 1987, the Reagan proposal will allocate to the NPS a mere 15.2 million dollars for land acquisition, a decrease of 23 million dollars from 1986 levels. Executive Office of the President, Office of Management and Budget, Budget of the United States Government, Fiscal Year 1987 I-N51, I-N52 app. (1986); *see also* [16 Cur. Devel.] Envtl. Rep. (BNA) 1831-32 (Feb. 7, 1986).

36. 42 U.S.C. §§ 4601-4655 (1982).

tion Act, federal agencies are required to offer an owner no less than the approved appraisal of the fair market value of the property. Additionally, the Relocation Act stipulates that the acquiring agency must pay for most, if not all, of what it may cost to convey title of the property and moving expenses for both owners and renters.[37]

1. Process of general land acquisition

The purchase of land units in fee for the NPS is the responsibility of the land resources divisions of the regional offices of the NPS, or, if one exists, the Land Acquisition Office at the park level. The real property interests sought after by the NPS and the order in which the parcels are to be acquired are documented in each park's Land Protection Plan.[38] Prior to commencing negotiations, the respective division or office is to map the property, procure title evidence, complete and approve an appraisal of fair market value, and in some instances conduct a land survey.[39]

The Relocation Act requires the NPS to offer the landowner no less than the fair market value of the land.[40] However, the legislation does not prevent acquisition of the property for *more* than the value appraised. In fact, with the exception of the Big Cypress National Preserve and the Everglades National Park, most land purchases have been for more than the value appraised by the NPS.[41] Recent legislative enactments have limited the authority of the NPS to acquire lands in excess of the approved appraised value without the prior consent of the Appropriations Committees of Congress.[42]

---

37. *See* 41 C.F.R. §§ 114-50.100 to .1306 (1985) (specific Interior regulations implementing the Relocation Act). *See generally* Annotation, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 33 A.L.R. FED. 9 (1977).

38. Land Protection Plans, *supra* note 8, at 21,125.

39. HOUSE REPORT, *supra* note 1, at 116.

40. 42 U.S.C. §§ 4601-4655 (1982); U.S. DEPARTMENT OF JUSTICE, LAND AND NATURAL RESOURCES DIVISION, A PROCEDURAL GUIDE FOR THE ACQUISITION OF REAL PROPERTY BY GOVERNMENTAL AGENCIES 29 (1972) ("Unless properties are to be donated to the United States, owners should not be requested to consummate a settlement for less than the approved appraisal of the property.").

41. HOUSE REPORT, *supra* note 1, at 116.

42. When this situation results, a letter stating the offered amount along with the appraised value, pertinent background information, justification for the acqui-

Several existing alternatives to NPS acquisition of fee simple interests may also adequately preserve unit resources. The acquisition of easements,[43] zoning restrictions,[44] government regulations,[45] and less-than-fee property interests[46] have been utilized

---

sition, and justification for the excess cost is submitted to the respective appropriation committees. *Id.* at 117.

43. Easements convey only some of the rights in a parcel of property. They may be either positive (giving right of access), or negative (restricting certain activities on the land). Examples of positive provisions are public access along a river or trail, NPS access to manage resources, and utility rights of way. Examples of negative provisions include restrictions on tree cutting, excavation or grading, extraction of resources, hunting or fishing, residential development, and commercial or industrial uses of land. It is an extremely flexible and useful tool to protect unit resources. Land Protection Plan policy recommends the use of easements where: (a) some, but not all private uses are compatible with unit purposes; (b) current owners desire to continue current types of use and occupancy of the land under terms set by NPS; and (c) scenic values need protection or access by the public or NPS only over a portion of the land. Land Protection Plans, *supra* note 8, at 21,127. Easements, however, may necessitate substantial monitoring and enforcement costs should the easement be violated. HOUSE REPORT, *supra* note 1, at 29.

44. Zoning is based on the power of government to protect the public health, safety, and welfare by regulating the use of land. Prohibitions and restrictions falling within this exercise of "police power" may generally be invoked by the government without making compensation to those adversely affected. J. GELIN & D. MILLER, THE FEDERAL LAW OF EMINENT DOMAIN 55 (1982). *But see* R. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN (1985) (questioning the constitutionality of such takings under the "police power"). Some authorizing legislation specifically provides for cooperation between NPS and local governments in the development of zoning regulations. The Land Protection Plan policy recommends the consideration of zoning when: (a) local government has a local zoning ordinance in place or appears to be willing to adopt one; (b) there is evidence of state and local support for the protection objectives of the unit; (c) some reasonable private use of the land is consistent with unit purposes; and (d) private land use needs to be controlled and managed rather than prohibited to meet unit objectives. Land Protection Plans, *supra* note 8, at 21,126. Zoning has three major disadvantages: (a) the potential for political change on local zoning boards and planning commissions could undercut the resource protection program; (b) zoning will not provide opportunities for public use and access; and (c) NPS enforcement costs may be expensive.

45. In addition to zoning, federal agencies along with state and local governments may utilize a number of other laws that can help protect unit resources. These regulations may control air and water pollution, dredging or filling of wetlands, hunting and fishing, tree cutting, resource extraction and excavation, and sub-division of land. Land Protection Plans, *supra* note 8, at 21,126. "Regulations cannot usually provide for public use, but can prevent harm to natural or cultural resources." *Id.*

46. An NPS unit may find it desirable to allow private owners to reserve cer-

by the NPS in various units instead of outright fee acquisition.[47] The use of these methods, either singly or in combination with each other, would have to be tailored to the unique needs of each individual unit.[48]

If, after careful consideration of the various protection alternatives, absolute fee acquisition is still deemed necessary, the NPS unit must engage in the procedure outlined above to acquire the property. Acquisition methods utilized include: (a) purchase of fee or less-than-fee interests from a willing seller; (b) donation of fee or less-than-fee interests by private landowners, conservation groups, state and local governments; (c) exchanges of land; (d) transfer of land from other federal agencies; and (e) condemnation of land. It is the last method, condemnation of land by

---

tain interests, such as a reservation of the right to occupy or use the property for a term (usually 25 years) or until death. Such compatible private uses of the land may result in great advantages for both the NPS and the private owner. The Park Service would be assured of eventually acquiring the tract at a value below the cost of an outright fee simple acquisition, while the private owner would receive ready cash from the NPS purchase and still remain on the land. The disadvantage is that life or term estates do not provide for immediate public use or access to the property.

47. In choosing between the acquisition or regulation of park land, Professor Sax suggests the government acquire an ownership interest in fee if one of the following conditions exists: (1) the land is needed for occupancy by the Park Service or by park visitors; (2) the land, though not necessary for occupancy, requires the acquisition of interests under the law of eminent domain; or (3) the federal government imposes constraints that go beyond the kind of regulations that have become familiar under the general police power in American law or in the resolution of conflicts between neighbors. Sax, *Helpless Giants: The National Parks and the Regulation of Private Lands*, 75 MICH. L. REV. 239, 269 (1976). In these times of governmental fiscal restraint, funds may not be available to procure land under condition (3) above, especially if the government is constitutionally compelled to first expend its limited financial resources under conditions (1) and (2). *See supra* note 35. Even though the Supreme Court struck down the automatic spending cuts provision of The Balanced Budget and Emergency Deficit Control Act of 1985 as an unconstitutional delegation of executive power to an officer of Congress, (Bowsher v. Synar, 106 S. Ct. 3181 (1986)), the 1987 Budget has been adopted conforming to the Act, thereby causing severe budget cuts in non-exempt federal agencies such as the NPS.
See generally Pub. L. No. 99-177, §§ 200-275, 99 Stat. 1038-1101 (1985) (popularly known as the "Gramm-Rudman-Hollings Act").

48. *See* OFFICE OF THE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR, NEW TOOLS FOR LAND PROTECTION: AN INTRODUCTORY HANDBOOK 8 (1982) (an excellent matrix to visualize and match various management objectives, activities, and conservation techniques).

acres of land and water on the outer cape. The authorized boundary includes about thirty-nine miles of ocean beach along the outer cape and six and one-half miles of beach fronting Cape Cod Bay. This was one of the first units created of previously private residential and commercial properties. After twenty-five years, the Seashore is still actively pursuing a plan of land acquisition.[60]

The Cape Cod National Seashore Act of 1961[61] confers upon the Secretary of the Interior (Secretary) the authority "to acquire by purchase, gift, condemnation, transfer from any Federal agency, exchange, or otherwise, the land, waters, and other property, and improvements thereon."[62] Acquisition by condemnation is specifically set out in the Act and includes several restraints on the power of the Secretary. Persons whose land has been acquired through condemnation may elect to retain the right of use and occupancy of the property for residential purposes for a term of twenty-five years or less.[63] The Act also suspends the Secretary's authority to acquire improved property[64] by condemnation so long as the towns comprising the Seashore have in force, and applicable to the property, a duly adopted, valid zoning bylaw approved by the Secretary.[65] The unit has adopted "use guidelines for private property" that direct private owners of improved property to comply with the Act.[66] This "Cape Cod formula" cre-

---

Traditionally Local Land Use Decisions, 12 B.C. ENVTL. AFF. L. REV. 225 (1985).

60. *See generally* Cape Cod National Seashore Land Protection Plan (1985). The Act originally appropriated $16 million to the unit for acquisition purposes. This amount was increased in 1970 to $33.5 million, and to almost $43 million in October 1983. 16 U.S.C.S. § 459b-8 (1985 Supp.)

61. 16 U.S.C. §§ 459b-1 to 459b-8 (1982).

62. 16 U.S.C. § 459b-1 (1982).

63. 16 U.S.C. § 459b-3(a)(1) (1982).

64. Improved property is defined as "detached, one-family dwelling the construction of which was begun before September 1, 1959, together with so much of the land on which the dwelling is situated." 16 U.S.C. § 459b-3(d) (1974).

65. 16 U.S.C. § 459b-3(b)(2) (1974).

66. The guidelines explain that an owner may jeopardize his eligibility for a "Certificate of Suspension of Condemnation of Improved Party" if the property is used in a manner inconsistent with the purposes of the Act.

Examples of compatible activities include normal maintenance and upkeep of private property, minor modifications of existing structures and outbuildings, replacement of roofing, and the repair or replacement of utility lines. Incompatible activities include (1) subdivision, timbering, or intensification of current uses which may be detrimental to the Seashore purposes; (2) alterations of existing structures or new construction having one or more of the following characteristics:

ated, in effect, federal zoning in the form of indirect federal control over local land use decisions.[67]

As of December 31, 1983, roughly 18.6% of the federally acquired land at the Seashore had been taken through the power of eminent domain (condemnation and declaration of taking), with ten percent of the land condemned under the Declaration of Taking Act procedures. Less than one percent of the acreage was protected by easement.[68] Few landowners have retained the use and occupancy of their property under the provisions of the Act. Life estates comprise a very small number of tracts.[69] Of the "adequately protected" land, the NPS directly controls 62.7% of the Seashore, with the rest of the land under the control of other federal agencies, the state, local government, and others.[70]

Of the remaining fifty-six parcels to be protected, the Seashore proposes the purchase of fee simple interests in only twenty-nine of the 261 acres. Less-than-fee acquisition (such as easements) by the NPS will protect 169 acres, while cooperative agreements will be achieved for the other sixty-three acres. Zoning will continue to give some level of protection to environmental

---

(a) new separate residences or new residences physically linked to the existing structure, (b) replacement of a major structure with one that is larger than its predecessor by more than fifty percent, (c) impairment of historical integrity of an identified historic structure; (3) expansion of existing uses to a point where they cause damage to the scenic, cultural, or natural resources of the area; (4) conversion of non-commercial property to commercial uses; (5) damage to natural, scientific, or cultural resources including topographic changes or disruptions of natural drainage patterns, or disturbance of natural vegetation or wildlife; (6) creation of hazards that endanger the safety of park visitors; (7) major increase in commercial use or traffic at access or crossing points on interior park roads which could result in hazardous conditions that may endanger the safety of park visitors. Cape Cod National Seashore Land Protection Plan B-2, 3 app. (1985) [hereinafter Cape Cod Protection Plan].

67. Thomas, *supra* note 59, at 233.

68. Cape Cod Protection Plan, *supra* note 66, at 18. *See also* text accompanying note 50.

69. Cape Cod Protection Plan, *supra* note 66, at 10. *See also* text accompanying note 63.

70. The Cape Cod Protection Plan list the following as adequately protected land: (1) NPS land: 27,139 acres; (2) other federal (U.S. Coast Guard and Defense Department): 147 acres; (3) Commonwealth of Massachusetts: 11,930 acres; (4) local town land (Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham): 2,612 acres; (5) private ways (providing access to developed property): 180 acres; (6) developed property: 1,115 acres; (7) commercial property: 140 acres. Cape Cod Protection Plan, *supra* note 66, at iv, 18-19.

and aesthetic values. Although the zoning used at the Seashore does not prohibit development, it provides for control over density, type, location, and character of private development.[71] In addition, other pertinent federal, state, and local laws assist in protecting the Seashore.[72]

The Cape Cod National Seashore is an example of an NPS unit which has succeeded in protecting unique environmental interests. The Seashore has achieved most of its goals since its inception in 1961. Congressional policy and intent which balanced the use of eminent domain with private interests were clearly drafted into the Act. Though the unit infrequently exercised its eminent domain discretion, it achieved the goals of protecting unit resources with creative management and the coordinating efforts of other governmental bodies. Still, warning signs loom on the horizon. With federal funds for parkland acquisition strictly limited,[73] the "Cape Cod formula" of using federal condemnation power as a means of regulating local land use activity may no longer remain a viable resource protection policy.[74]

B. Olympic National Park

The Olympic National park, located on the Olympic Peninsula in Washington State, was established by Congress in 1938 to preserve for the benefit, use, and enjoyment of the people the Park's spectacular coastline, scenic lakes, majestic mountains and glaciers, and the magnificent rain forests. The Olympic Peninsula is ecologically isolated, bounded on the west, north, and east by

---

71. *Id. See also* Cape Cod Seashore: Zoning Standards, 36 C.F.R. § 27.1-.4 (1985).

72. Cape Cod National Seashore has concurrent jurisdiction over the acquired lands within its boundaries. The discharge of pollutants into the environment is restricted by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1376 (1982). Other federal laws which protect the Seashore are the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-10 (1982); the Archeological Resources Act of 1979, 16 U.S.C. §§ 470aa-470ee (1982 & Supp. II 1984); the National Historic Preservation Act, 16 U.S.C. §§ 470-470w-6 (1982); and the Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451-1464 (1982). Additionally, the Massachusetts Wetlands Protection Act, (MASS. GEN. LAWS ch. 131, § 40 (1974)) prohibits private parties and governmental agencies from filling, removing, dredging, or otherwise altering a wetland or any area within 100 feet of a wetland.

73. *See supra* note 35.

74. *See also* Thomas, *supra* note 39, at 255 (referring to the "Cape Cod formula" as a "paper tiger").

large bodies of saltwater, and on the south by forests. Eleven species and varieties of plants, five mammals, three fish, and at least one butterfly occur nowhere else outside of the Olympics.[75]

The purpose and intent of the 1938 Act made it clear that the establishment of the Park did not nullify the property rights of inholders.[76] An amendment in 1958 authorized the Secretary of the Interior to exchange some federal land for lands and interest in lands not in federal ownership within the exterior boundaries of the park.[77] Legislative history of the amendment indicates that one of the Act's purposes was to partially eliminate private inholdings in the Park which ostensibly created problems in the administration of the Park.[78] The need for the 1958 amendment indicates that condemnation authority was not utilized during the early history of the Park.

Condemnation power was specifically granted to the Secretary under the Olympic National Park Act under the 1976 amendment which extended the Park to include the Ozette and Point of Arches areas.[79] Technically, however, the Park unit already had vested eminent domain power under the Condemnation Act.[80] Two conclusions can be offered as a result of the 1976 amendment: (1) Congress was attempting to encourage the unit manager to use condemnation proceedings, or (2) Congress did not realize that condemnation power already existed in the unit. Unfortunately, legislative history does not reveal an answer to this question. Nevertheless, this confusing situation points to the need for the clear and concise vesting of eminent domain power on a specific, rather than general, basis.

C. Ebey's Landing National Historical Reserve[81]

The Ebey's Landing National Historical Reserve (Reserve) of

---

75. Olympic National Park Land Protection Plan 2 (1983).

76. 16 U.S.C. § 255 (1982).

77. 16 U.S.C. § 251b (1982).

78. S. REP. No. 1553, 85th Cong., 2d Sess. (1958) *reprinted in 1958* U.S. CODE CONG. & AD. NEWS 2638.

79. 16 U.S.C. § 251 (1982).

80. *See supra* note 14.

81. Ebey's Landing National Historical Reserve is not an actual unit of the National Park System, but is classified as an "affiliated area" under 16 U.S.C. § 461 (1982). However, the Reserve is characterized by substantial financial and

Washington State was established by Congress in November 1978 "in order to preserve and protect a rural community which provides an unbroken historical record from the nineteenth century exploration and settlement in Puget Sound to the present time."[82] The Reserve comprises the Central Whidbey Historical District, which includes a scenic island community of farms, woodlands, open space, historical structures, and the historic town of Coupeville. The resources to be protected constitute the historic rural environment of central Whidbey Island. The Reserve is comprised of approximately 13,100 acres of land and 4,300 surface acres of salt water for a total of 17,400 acres.[83] The resources to be protected by the reserve are quite varied.[84]

The legislative authority for the acquisition of property at Ebey's Landing explicitly prohibits the use of eminent domain: "[t]he Secretary [of the Interior] is authorized to acquire such lands and interest . . . by donation, purchase with donated or appropriated funds, or exchange, except that the Secretary may not acquire the fee simple title to any land without the consent of the owner."[85] The Reserve was authorized to carry out the provisions of the Act at an amount not to exceed five million dollars, of which $500,000 was to be used for development.[86]

The Reserve has managed well without the use of eminent domain power. Several traditional and non-traditional methods were incorporated into its land protection plan by project man-

---

technical support from the NPS. Additionally, Ebey's Landing resembles NPS units in its compliance with the NPS 1983 Land Protection Plan policy. Despite the technical classification of the Reserve, its strong relationship with the NPS and its experience under the Land Protection Plan policy make it deserving of inclusion in this survey.

82. National Parks and Recreation Act of 1978, 16 U.S.C. § 461 (1982).

83. Ebey's Landing National Historical Reserve Land Protection Plan 3 (1984) [hereinafter Ebey's Landing LPP].

84. The reserve's LPP identifies several key resources to be protected at Ebey's Landing. They include (1) visual resources, such as seascapes and prairies; (2) archeological resources, of which 33 sites have been identified at the Reserve; (3) historical resources, which include at least 91 residential and commercial structures in the National Register of Historic Places; (4) recreation resources, which include saltwater beaches and scenic vistas; (5) fishery resources, such as smelts, mussels, and clams; and (6) sensitive biotic resources. Two listed endangered and threatened species, the peregrine falcon and the bald eagle, may occur within the Reserve. *Id.* at 3-7.

85. 16 U.S.C. § 461 (1982).

86. *Id.* at § 508(f).

ager Reed Jarvis to protect the resources of Ebey's Landing. These include:

(1) maintenance of a favorable public attitude for the reserve by dealing with each landowner on an individual basis and taking into account his or her future needs;[87]

(2) purchase and donation of development rights (easements) to preserve some of the open and rural character of the reserve though currently purchase of the rights is limited due to high cost and the limited amount of money remaining for land protection;

(3) purchase in fee simple which would be used to preserve the historical rural character of the critical areas, though as with the purchase of development rights, it is a costly venture;

(4) development of a zoning plan in cooperation with local governments to protect the critical areas and those lands adjacent to the critical areas;

(5) exchange of acquired land for fee simple title of land in critical areas in order to build a contiguous land ownership;

(6) exchange of fee simple title of land to a private party for the development rights on both parcels. For example, the NPS owns Blackacre which is suitable for farming. Smith who farms on Whiteacre desires to expand his agricultural base by acquiring Blackacre. The Reserve will trade fee title of Blackacre to Farmer Smith for development rights on both farms. In this way, the Reserve can protect the resources of both parcels of land while Farmer Smith can increase his production capacity.[88]

Although the Ebey's Landing formula may not be an appropriate substitute for eminent domain in all NPS units, the creative methods utilized to protect reserve resources should serve as an example for future acquisition programs at NPS sites. Reed Jarvis and his staff at Ebey's Landing should be credited for having explored, developed, and implemented such creative alternatives to the power of eminent domain.

---

87. Telephone interview with Reed Jarvis, Project Manager of Ebey's Landing National Historical Reserve (Oct. 25, 1985).

88. *Id.* Ebey's Landing LPP, *supra* note 83, at 20-21.

D. Cuyahoga Valley National Recreation Area

The Cuyahoga Valley National Recreation Area (CVNRA) of Ohio has posed a difficult situation for the NPS. The CVNRA was established in 1974 to protect numerous sites of historic significance, in addition to preserving the relatively undeveloped valley as a setting for outdoor recreation.[89] The legislative history of the Act made it clear that the use of scenic easements should be a major part of the land acquisition program for the area.[90]

There is an interesting history behind the acquisition language of the Cuyahoga Valley legislation. During the congressional hearing concerning the creation of the CVNRA, several related bills were under consideration. Congressman John Seiberling of Ohio, a supporter of the CVNRA, claimed that the bills were identical in content.[91] However, in at least acquisition authority, Seiberling was incorrect. H.R. 7167, the version which did not pass, had proposed acquisition by zoning[92] in a manner similar to the "Cape Cod" formula.[93] The bill, H.R. 7077, which eventually passed Congress, had originally *included* condemnation power;[94] however, this power was conspicuously absent from the final bill passed by Congress[95] and now codified.[96] The obvi-

---

89. S. REP. No. 1328, 93d Cong., 2d Sess. (1974), *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 6649-50.

90. *Id.* at 6655.

91. *Proposed Cuyahoga Valley National Historical Park and Recreation Area: Hearing Before the Subcomm. on Nat'l Parks and Rec. of the House Comm. on Interior and Insular Affairs*, 93d Cong., 2d Sess. 104 (1974) (74 C.I.S. H441-21) [hereinafter *Hearings*].

92. "(b) No real property of interest therein may be acquired under this Act without the consent of the landowner as long as there is in force and applicable thereto a duly adopted, valid zoning law or ordinance approved by the Secretary [of the Interior] . . . ." *Id.* at 4.

93. *See supra* notes 65-67 and accompanying text.

94. "SECTION V—LAND ACQUISITION. The Secretary [of the Interior] is authorized to acquire lands within the park by donation, purchase with donated or appropriated funds, by condemnation or by exchange . . . . " *Hearings*, *supra* note 91, at 15.

95. *See* H.R. REP. No. 93-1511, 93d Cong., 2d Sess. 2 (1974) (74 C.I.S. H443-46); S. REP. No. 93-1328, 93d Cong., 2d Sess. 8 (1974) (74 C.I.S. S443-74).

96. "[T]he Secretary . . . may acquire lands, improvements, waters, or interests therein by donation, purchase with donated or appropriated funds, exchange, or transfer." 16 U.S.C. § 460ff-1(b) (1982). Standing alone, the canon of statutory construction *expressio unius est exclusio alterius* would deem the power to condemn *ultra vires*. *See also* LAND AND NATURAL RESOURCES DIVISION, U.S. DEPART-

ous lack of specific authorization did not, however, prevent the NPS from using condemnation proceedings to acquire private property in the Cuyahoga Valley. By 1982 the NPS, apparently acting under the Condemnation Act,[97] had acquired at least fifty out of 378 residential parcels through condemnation.[98] The irony of this situation is that the Department of the Interior was initially against the enactment of the Cuyahoga Valley legislation.[99]

Neither Congress nor the courts are likely to remedy such actions by the NPS. Congress can no longer rely upon the legislative veto as a means of providing prospective relief of an agency action.[100] While other mechanisms of oversight and control may be utilized by Congress, such specific corrective legislation would prove difficult to achieve.[101]

MENT OF JUSTICE, A PROCEDURAL GUIDE FOR THE ACQUISITION OF REAL PROPERTY BY GOVERNMENTAL AGENCIES 2 (1972) ("If defects in the agency's authority to condemn are found, or if the extent of that authority is unclear, it is recommended that clarifying legislation or an explicit authorization in an appropriation act be obtained before acquisition of properties is commenced.").

97. *See supra* note 14. Whether congressional proponents of H.R. 7077 intentionally dropped the explicit condemnation language in order to alleviate local landowner opposition to the bill is a speculative, but not unrealistic, assessment of the facts.

98. Letter from Congressman John Seiberling (D., Ohio), Chairman of Subcommittee on Public Lands and National Parks, to the Wall St. J., June 14, 1982 at 21, cols. 1-2. A statistical summary of the private acres taken through condemnation at the Cuyahoga Valley is not included in its Land Protection Plan of October 1984. Cuyahoga Valley National Recreation Area Land Protection Plan 3 (1984). For a popular account of the private landowners' plight at the CVNRA, see Weiss, *Park Service Land-Grab*, THE PROGRESSIVE, 35-37 (Oct. 1985).

99. "The Department contends that the resources of the valley will be sufficiently protected through a program now underway in which matching grants from the Land and Water Conservation Fund are combined with State and local funds for the purchase of land in the area." S. REP. No. 1328, *supra* note 89, at 6654.

100. In I.N.S. v. Chadha, an immigration judge suspended an alien's deportation pursuant to 8 U.S.C. § 1254(c)(1). The U.S. House of Representatives vetoed the suspension under 8 U.S.C. § 1254(c)(2), which authorized one House of Congress to invalidate the decision of the executive branch to allow a particular deportable alien to remain in the United States. This veto power was held to be unconstitutional. 462 U.S. 919, 924-28 (1983). The court soon thereafter affirmed without opinion a ruling which struck down congressional use of the two-house veto. United States Senate v. F.T.C., 463 U.S. 1216 (1983), *aff'g* Consumers Union v. F.T.C., 691 F.2d 575 (D.C. Cir. 1982) (en banc).

101. Mak, *One Fell Swoop: The* Chadha *Decision and the Need for Supreme Court Clarification*, 9 SETON HALL LEGIS. J. 161, 199-200, 203-04 (1985).

The judiciary has refused to intervene in such matters. In an unpublished Sixth Circuit decision, the court interpreted the Cuyahoga Valley Act to have authorized the Secretary of the Interior "to employ the power of eminent domain to acquire those parcels of land required for park use." The court refused to look at the legislative history of the Act, saying that the judiciary's role is limited in a question concerning eminent domain.[102]

The GAO has harshly criticized the NPS for its land acquisition practices at Cuyahoga Valley. In a 1981 report, the GAO published the results of a telephone survey with 236 randomly selected residents of the CVNRA. Many Cuyahoga Valley landowners did not believe they were properly informed about the NPS's intent to acquire an interest in their property or were treated fairly during the negotiation process.[103] The GAO report also found that little use was made of easements as an alternative to fee acquisition. The area superintendent directed the land acquisition office to acquire no easements that exceeded twenty-five percent of the full fee value. As of 1981, the NPS had acquired no agricultural easements in the Cuyahoga Valley.[104]

Contrary to congressional intent, these land acquisition policies resulted in the elimination of many pastoral and historic settings.[105] The GAO report also stated that zoning as a land acqui-

---

102. Cuyahoga Valley Home-owners & Residents Association v. Andrus, No. 82-3324, 716 F.2d 902 (6th Cir. 1983), *cert. denied*, 464 U.S. 1008 (1983). *See also* note 116 (discussing the limited role of the court in evaluating the "public use" requirement in eminent domain legislation).

103. The GAO survey found that 77% of the 236 landowners said they did not believe their properties would be acquired. Eighteen of 29 landowners who knew their property would be in the recreation area said that the interest to be acquired would be a scenic easement. Although the 1979 NPS policy required officials to obtain landowners' input in the development of land acquisition plans, only five percent of the 117 landowners who knew of the plan said that they had participated in the development of the plan for the area. Thirty-eight percent of the 147 landowners whose property was acquired in fee simple said that they objected to this type of acquisition. Thirty-six percent of the 236 landowners said that they believed the Park Service's land acquisition practices in the area were unfair; 33% had no opinion, and 31% considered them fair. U.S. GENERAL ACCOUNTING OFFICE REPORT TO SEN. TED STEVENS, FEDERAL LAND ACQUISITION AND MANAGEMENT PRACTICES, CED-81-135 at 19-20 (Sept. 11, 1981). *See also* note 97 and accompanying text.

104. REPORT TO SEN. TED STEVENS, *supra* note 103 at 18.

105. *See generally* S. REP. No. 1328, *supra* note 89, at 6656 (for legislative history regarding "improved property").

sition alternative had not been promoted.[106] While subsequent expansion of the unit could account for some increase of expenses, the reliance on fee acquisition at the CVNRA is reflected in its authorized appropriations, which have increased from $34,500,000 in 1974 to $70,100,000 in 1978.[107]

A more vigorous program of fee acquisition at the CVNRA was advocated in a 1984 report by the staff of the House Subcommittee on Public Lands and National Parks. The report indicated that in 1983 over fifty landowners were willing to sell their property in the CVNRA. With over six million dollars in unobligated funds available for acquisition, the report criticized the NPS for not having purchased this land.[108] The report, however, did not address the reason *why* the NPS should have bought the land.

Statutory authority does not direct the NPS to buy every tract of land where a willing seller exists. If the NPS can protect the unit's resources in an effective and less expensive manner, the NPS should be complimented for not wasting taxpayers' money on unnecessary fee acquisitions. Current and future prospects for severe financial constraints on parkland acquisition only serve to magnify this important reality.[109]

The House report also criticizes the NPS for delays incurred in approving a declaration of taking at the CVNRA. At risk in the three-month interim was potential development of the property. By the time the NPS had filed the Declaration of Taking, the then current owner had received zoning and other local approvals and had begun marking and cutting down trees for a housing development.[110] The NPS might have remedied this problem in one of two ways. First, the CVNRA might have developed a closer

---

106. REPORT TO SEN. TED STEVENS, *supra* note 103 at 19.

107. 16 U.S.C. § 460ff-5(a) (1982).

108. HOUSE REPORT, *supra* note 1, at 16.

109. When considering the amount of acreage left to protect, the high costs of acquiring land, and the limited funds available, it is important that the Park Service acquire only those lands, or interests therein, needed and that alternatives to fee simple acquisition be used to the maximum extent feasible.

U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE SECRETARY OF THE INTERIOR, NEW RULES FOR PROTECTING LAND IN THE NATIONAL PARK SYSTEM—CONSISTENT COMPLIANCE NEEDED at 16-17 RCED-86-16 at 16-17 (Oct. 31, 1985) [hereinafter REPORT TO THE SECRETARY OF THE INTERIOR]. *See also* note 35.

110. HOUSE REPORT, *supra* note 1, at 19-20.

relationship with the local zoning authorities and developed some form of cooperative land use plan for the CVNRA and vicinity. Second, an equitable remedy such as an injunction for a threatened irreparable injury to the land might have been sought in forestalling further development on the property until the Declaration of Taking became effective. The House report did not suggest either of these alternatives.

The success of many other NPS units was not replicated at the CVNRA. Misunderstanding of the unit's legislative purpose, poor public relations, and the agency's overzealous nature in resorting to unnecessary and expensive land acquisition practices resulted in an unsatisfactory situation in the Cuyahoga Valley.

IV. Proposal for Reform

As exemplified by the units discussed, there exists no uniform policy standard or guideline for the implementation of NPS eminent domain authority. As a result, the individual unit managers are left with wide discretion.[111] Although legislation for forty-one of the NPS units explicitly provides for some form of eminent domain discretion of the Secretary of the Interior,[112] the

---

111. Telephone interview with Warren Brown, Program Analyst for the Division of Park Planning and Special Studies (Oct. 28, 1985).

112. The author found the following NPS units with at least some vested condemnation power on the part of the Interior Secretary. All are found in Title 16 of the United States Code (1982 & Supp. II 1984): Yosemite National Park, § 47e; Redwood National Park, § 79g(b); Colonial National Historical Park, § 81e; Saratoga National Historical Park, § 159a; Chalmette National Historical Park, § 231b; Olympic National Park, § 251i; Theodore Roosevelt National Park, § 242; Cumberland Gap National Historical Park, § 263; Canyonlands National Park, § 271c(b); Virgin Islands National Park, § 398d(d); Great Smoky Mountains National Park, § 403i; Mammoth Cave National Park, § 404c-11; Lowell National Historical Park, § 410cc-34(a); Richmond National Battlefield Park, § 423k; Fredericksburg and Spotsylvania County Battle Fields Memorial, § 425a; Stones River National Battlefield, § 426d; Site of Battle with Sioux Indians, § 427; Kings Mountain National Military Park, § 430a; Gettysburg National Military Park, § 430g; Vicksburg National Military Park, § 430h-3(b); Monocacy National Battlefield, § 430k; Kennesaw Mountain National Battlefield Park, § 430u; Wilson's Creek National Battlefield, § 430kk; Antietam Battlefield, § 430nn; Perry's Victory and International Peace Memorial, § 433c; Fort Frederica National Monument, § 433h; Pipestone National Monument, § 445d; Pioneer National Monument, § 449; Fort Stanwix National Monument, § 450m; Andrew Johnson National Historic Site, § 450p; Ackia Battleground National Monument, § 450r; Homestead National Monument of America, § 450u; DeSoto National Memorial, §

general Condemnation Act grants the power of eminent domain to *every* NPS unit without specific legislative authority.[113] The following reforms would correct such inequities:

(1) The general Condemnation Act of 1888 should be repealed by Congress. It should be replaced by a statute which vests a particular federal agency with eminent domain authority *only* when such authority has been specifically granted to that particular federal unit in its authorizing legislation.[114] While the 1888 general Condemnation Act may have been " a natural means for Congress to adopt in putting its constitutional powers into use on a scale commensurate with the size of the nation and the need of the time,"[115] our current notions of procedural due process, fair play, and the expansive interpretation of "public use"[116] should be considered in fashioning a modern replacement for the Act.[117]

(2) Acquisition power should be tailored to accomplish the specific needs of each unit.[118] Congress should grant eminent do-

---

450dd; Booker T. Washington National Memorial, § 450*ll*; Cape Hatteras National Seashore Recreational Area, § 459a; Cape Cod National Seashore, § 459b-3; Padre Island National Seashore, § 459d-1; Fire Island National Seashore, § 459e-1(a), (e); Canaveral National Seashore, § 459j-2; Pictured Rocks National Seashore, § 460s-7(a); Sleeping Bear Dunes National Seashore (inferred), § 460x-3(b).

113. *See supra* notes 14 and 15.

114. This particular proposal will impact upon *all* federal agencies which conduct eminent domain proceedings under the general Condemnation Act. While a discussion of these agencies is beyond the scope of this Comment, Congress should likewise review the authorizing legislation of these respective agencies and tailor their condemnation powers accordingly.

115. *Carmack*, 329 U.S. at 236. *See also* note 14.

116. Any restriction which the authors of the 1888 general Condemnation Act may have envisioned by limiting such power to the procurement of real property for "other public uses" has long since been forgotten. The Supreme Court's interpretation of "The Public Use Doctrine" of the fifth amendment serves as an instructive example. The Court has exhibited a permissive attitude in deciding whether a taking scheme by the government fulfills the "public use" requirement in eminent domain questions. Unless the scheme is irrational, the Court will acquiesce to the legislative branch the question of "public use," thereby making such a requirement a preordained fact. "[I]f a legislature, state or federal, determines there are substantial reasons for an exercise of the taking power, courts must defer to its determination that the taking will serve a public use." Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 244 (1984).

117. *See supra* note 97.

118. For example, the purpose of the Chaco Culture National Historical Park, associated with the Chaco Archeological Protection Site System (CAPSS) in northwestern New Mexico, is to provide for the preservation and interpretation of

main power *only* to those NPS units where it is absolutely necessary to accomplish the legislated purposes of the unit. Facilities with limited protection mandates such as Ebey's Landing find that they are able to function adequately without the power. NPS units, perhaps in an urban environment, might discover it impossible to fulfill their congressional purposes without the power of eminent domain.[119]

(3) Congress should carefully tailor the eminent domain authority it dispenses to individual NPS units to prevent misuse of discretion by unelected officials. Congress must shoulder a greater responsibility in the implementation of NPS eminent domain authority. Ministerial functionaries not directly accountable to the public should be prevented from engaging in policy choices. Legislation should be drafted to incorporate procedural and substantive checks in such condemnation authority.

(4) Congress must avoid vague legislative authorization language. Congressional intent to vest condemnation power to a unit should be unequivocally stated. Such legislation may have prevented the unfortunate situation which occurred at the CVNRA.

---

the unique archeological resources associated with the prehistoric (Indian) Chacoan culture, and to facilitate research activities associated with these resources. 16 U.S.C. § 410ii(b) (1982). The Joint Management Plan provides for the coordinated management, protection, and interpretation of 33 sites by the Bureau of Land Management, Bureau of Indian Affairs, Navajo Nation, individual Navajo Indians, and private landowners. Joint Management Plan, Chaco Culture Archeological Protection Site System 26 (1982). *See also* 16 U.S.C. § 410ii-1(b) (1982).

Congressman Bill Richardson (D., New Mexico) has introduced a bill which would add all of the CAPSS archeological protection sites to the Chaco Culture National Historical Park. The proposed bill would allow the Secretary of the Interior to "acquire by exchange or purchase the beneficial interests which the Navajo Nation may have in the archeological protection sites . . . or the Secretary shall seek to enter into a cooperative agreement with the Navajo Nation." H.R. 3685, 99th Cong., 1st Sess. (1985). Since condemnation is explicitly prohibited from use in the acquisition of property held in trust for the benefit of any Indian tribe, 16 U.S.C. § 410ii-3(a), there is a serious question whether the general Condemnation Act could be utilized to take Indian property under the proposed bill.

119. The Lowell National Historical Park, located in Massachusetts near the New Hampshire border, is such an example. A significant textile producing site in the 19th century, the Lowell unit was established in 1978 in part to preserve "a very large proportion of the buildings, other structures and districts in Lowell [which] date to the period of the Industrial Revolution and are nationally significant historical resources." 16 U.S.C. § 140cc (1982). Protection alternatives to acquisition would be wholly inadequate to preserve such historical resources while allowing for public access.

(5) The judiciary must not abdicate its responsibility as guardians of the Constitution by refusing to rule upon alleged abuses of eminent domain power. While the congressional creation and expansion of park units are admittedly public uses under the fifth amendment, this should not prevent the courts from evaluating the legislative history and the purposes of each act to enforce congressional intent.

(6) The NPS should carry the Land Protection Plan policy[120] one step further and establish uniform eminent domain guidelines for all units vested with such power from Congress. Implementation of the power must be exercised sparingly. Alternatives to fee acquisition where it would comparatively protect unit resources must be utilized over eminent domain in most, if not all, contingencies.[121] Innovative preservation programs such as those conducted at Ebey's Landing should continue to be explored and expanded especially in these times of severe fiscal austerity.

V. Conclusion

The National Park Service, in its seventy-year existence, has been the steward of our national crown jewels, the national parks. The various policies put forth to tackle the onerous task of maintaining and expanding these resources have not always been universally accepted. A pitched battle is often fought in the national arena between various constituencies, frequently ending in political compromise. And yet, a rude surprise often awaits individuals who believe their private land is secure from a taking. A nineteenth century Act of Congress vesting general condemnation power in officers of the federal government may be invoked, extraneous to the park legislation enacted through the democratic political process. This scenario can be avoided once appropriate reforms are adopted by Congress.

---

120. In its first review of the 1983 Land Protection Plan (LPP) policy, the General Accounting Office found the NPS had not consistently complied with the policy. Of the 38 LPPs reviewed by the GAO, 25 were found deficient. For example, some plans rejected acquiring the minimum interest needed for resource protection, citing landowner concerns or unsupported claims of cost-effectiveness. The NPS takes strong exception to many of the GAO's criticisms. Report to the Secretary of the Interior, *supra* note 109 at 8, 18-19 RCED-86-16 (Oct. 31, 1985). The author believes such inconsistencies in compliance will be remedied in part by the inevitable swing of the budget ax. *See* note 47.

121. *See supra* notes 47 and 109.

A variety of circumstances dictate that eminent domain may, and in some cases *must*, be used as a tool in the creation, development, or growth of present and future units of the National Park Service. However, this vesting of condemnation power must be granted to park units on an individual basis by Congress, grounded on a fair representation of the facts to those whose lives and property are likely to be affected, and forged in the heat of the democratic process.

ENVIRONMENTAL LAW

Northwestern School of Law
of Lewis and Clark College

VOLUME 16 SUMMER 1986 NUMBER 4

CONTENTS

ARTICLES

Can Environmentalists Be Liberals? Jurisprudential Foundations of Environmentalism 775
Mark Sagoff

Liberal political theory, insofar as it insists on the neutrality of the State among conceptions of the good life, may seem to limit social policy to two goals: the deontological goal of protecting the rights and the utilitarian goal of satisfying the interests of individuals. Environmentalists who consider themselves liberals may have a problem because these goals—and any "tradeoff" between them—do not generally justify policies environmentalists typically support. The author argues, however, that liberal political theory extends primarily to the structure of social institutions. At the level of social policy, liberalism is *liberal* if it protects fundamental rights and interests and responds on the merits to a variety of non-neutral cultural, ethical, historic, and aesthetic concerns. Accordingly, environmentalists may be liberals without contorting their objectives (as they often do) to square them with the rights-and-interests rhetoric they associate with deontological and utilitarian liberalism.

Coercion and Groundwater Management: Three Case Studies and a "Market" Approach 797
Paula K. Smith

Waste, groundwater mining, well interference, inability to transfer groundwater rights, and a failure to recognize the interaction of groundwater and surface water are well recognized problems in groundwater management. This Article discusses how four approaches to groundwater management deal with these

problems. In making recommendations for a groundwater management program, the author notes that groundwater management involves problems of the common pool and that a solution must involve coercion, not merely imposing pro rata costs.

Waterfowl and Lead Shot 883
Bruce B. Weyhrauch

This Article discusses the harmful effects of lead shot on waterfowl, their predators, including eagles, and their environment. The author traces piecemeal federal and state attempts to regulate hunters' use of lead shot. The Article concludes: Congress should repeal the Stevens Amendment, which requires state approval of nontoxic shot zones; states should act aggressively to eliminate lead shot; and private hunting and conservation organizations should educate the public about the toxicity of lead shot and the suitability of steel shot as a safe and effective substitute.

COMMENT

Parks, People, and Private Property: The National Park Service and Eminent Domain 935
Steven A. Hemmat

A ninteenth century Act of Congress empowers officers of the National Park Service to exercise condemnation authority whenever they may acquire real estate. This Comment examines the development of National Park acquisition policy, acquisition authority, and the process of land acquisition within the National Park System. After surveying several National Park areas, the author concludes that Congress should individually grant eminent domain power only to those park areas where such power is deemed necessary. Several reforms are proposed.

NOTE

Do Oregon's Water Export Regulations Violate the Commerce Clause? 963
Robert Currey-Wilson

This Note analyzes Oregon statutes that require express legislative consent to appropriation or use of Or-

American Indian Policy

On January 24, 1983, President Ronald Reagan issued an American Indian policy statement which reaffirmed the government-to-government relationship of Indian tribes with the United States; expressed the primary role of tribal governments in reservation affairs; and called for special efforts to develop reservation economies.

The President's policy expanded and developed the 1970 national Indian policy of self-determination for Indian tribes. President Reagan said it was the goal of his administration to turn the ideals of the self-determination policy into reality. President Reagan's policy statement follows.

This Administration believes that responsibilities and resources should be restored to the governments which are closest to the people served. This philosophy applies not only to state and local governments, but also to federally recognized American Indian tribes.

When European colonial powers began to explore and colonize this land, they entered into treaties with sovereign Indian nations. Our new nation continued to make treaties and to deal with Indian tribes on a government-to-government basis. Throughout our history, despite periods of conflict and shifting national policies in Indian affairs, the government-to-government relationship between the United States and Indian tribes has endured. The Constitution, treaties, laws, and court decisions have consistently recognized a unique political relationship between Indian tribes and the United States which this Administration pledges to uphold.

In 1970, President Nixon announced a national policy of self-determination for Indian tribes. At the heart of the new policy was commitment by the federal government to foster and encourage tribal self-government. That commitment was signed into law in 1975 as the Indian Self-Determination and Education Assistance Act.

The principle of self-government set forth in this Act was a good starting point. However, since 1975, there has been more rhetoric than action. Instead of fostering and encouraging self-government, federal policies have by and large inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decisionmaking, thwarted Indian control of Indian resources, and promoted dependency rather than self-sufficiency.

This Administration intends to reverse this trend by removing the obstacles to self-government and by creating a more favorable environment for the development of healthy reservation economies. Tribal governments, the federal government, and the private sector will all have a role. This Administration will take a flexible approach which recognizes the diversity among tribes and the right of each tribe to set its own priorities and goals. Change will not happen overnight. Development will be charted by the tribes, not the federal government.

This Administration honors the commitment this nation made in 1970 and 1975 to strengthen tribal governments and lessen federal control over tribal governmental affairs. This Administration is determined to turn these goals into reality. Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.

In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards.

Tribal Self-Government

Tribal governments, like state and local governments, are more aware of the needs and desires of their citizens than is the federal government and should, therefore, have the primary responsibility for meeting those needs. The only effective way for Indian reservations to develop is through tribal governments which are responsive and accountable to their members.

Early in this nation's dealings with Indian tribes, federal employees began to perform Indian tribal government functions. Despite the Indian Self-Determination Act, major tribal government functions--enforcing tribal laws, developing and managing tribal resources, providing health and social

services, educating children--are frequently still carried on by federal employees. The federal government must move away from this surrogate role which undermines the concept of self-government.

It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This Administration pledges to assist tribes in strengthening their governments by removing the federal impediments to tribal self-government and tribal resource development. Necessary federal funds will continue to be available. This Administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs.

For those small tribes which have the greatest need to develop core governmental capacities, this Administration has developed, through the Assistant Secretary of the Interior for Indian Affairs, the Small Tribes Initiative. This program will provide financial support necessary to allow these tribes to develop basic tribal administrative and management capabilities.

In keeping with the government-to-government relationship, Indian tribes are defined by law as eligible entities and receive direct funding, if they wish, in five block grant programs administered by the Department of Health and Human Services. These and other blocks to the states consolidated dozens of categorical federal domestic assistance programs to reduce fragmentation and overlap, eliminate excessive federal regulation, and provide for more local control. This Administration now proposes that Indian tribes be eligible for direct funding in the Title XX social services block, the block with the largest appropriation and the greatest flexibility in service delivery.

In addition, we are moving the White House liaison for federally-recognized tribes from the Office of Public Liaison to the Office of Intergovernmental Affairs, which maintains liaison with state and local governments. In the past several administrations, tribes have been placed along with vital interest groups, such as veterans, businessmen and religious leaders. In moving the tribal government contact within the White House Intergovernmental Affairs staff, this Administration is underscoring its commitment to recognizing tribal governments on a government-to-government basis.

Further, we are recommending that the Congress expand the authorized membership of the Advisory Commission on Intergovernmental Relations (42 U. S. C. 4273) to include a representative of Indian tribal governments. In the interim before Congressional action, we are requesting that the Assistant Secretary for Indian Affairs join the Commission as an observer. We also supported and signed into law the Indian Tribal Governmental Tax Status Act which provides tribal governments with essentially the same treatment under federal tax laws as applies to other governments with regard to revenue raising and saving mechanisms.

In addition, this Administration calls upon Congress to replace House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now discredited policy of terminating the federal-tribal relationship. Congress has implicitly rejected the termination policy by enacting the Indian Self-Determination and Education Assistance Act of 1975. However, because the termination policy declared in

Interior Secretary James Watt has visited Indian reservations and has met frequently with Indian leaders. With him, from left to right, are: Wilfred Scott, Chairman of the Nez Perce Tribe in Idaho and President of the Council of Energy Resource Tribes; Joseph DeLaCruz, President of the Quinault Tribe's Business Committee and President of the National Congress of American Indians; and Phillip Martin, Chairman of the Choctaw Tribe of Mississippi and President of the National Tribal Chairmen's Association.

H. Con. Res. 108 has not been expressly and formally repudiated by a concurrent resolution of Congress, it continues to create among the Indian people an apprehension that the United States may not in the future honor the unique relationship between the Indian people and the federal government. A lingering threat of termination has no place in this Administration's policy of self-government for Indian tribes, and I ask Congress to again express its support of self-government.

These actions are but the first steps in restoring control to tribal governments. Much more needs to be done. Without sound reservation economies, the concept of self-government has little meaning. In the past, despite good intentions, the federal government has been one of the major obstacles to economic progress. This Administration intends to remove the impediments to economic development and to encourage cooperative efforts among the tribes, the federal government and the private sector in developing reservation economies.

Development of Reservation Economies

The economies of American Indian reservations are extremely depressed with unemployment rates among the highest in the country. Indian leaders have told this Administration that the development of reservation economies is their number one priority. Growing economies provide jobs, promote self-sufficiency, and provide revenue for essential services. Programs to stimulate growth have been fragmented and largely ineffective. As a result, involvement of private industry has been limited, with only infrequent success. Developing reservation economies offers a special challenge: devising investment procedures consistent with the trust status; removing legal barriers which restrict the type of contracts tribes can enter into and reducing the numerous and complex regulations which hinder economic growth.

Tribes have had limited opportunities to invest in their own economies because often there has been no established resource base for community investment and development. Many reservations lack a developed physical infrastructure including utilities, transportation and other public services. They also often lack the regulatory, adjudicatory and enforcement mechanisms necessary to interact with the private sector for reservation economic development. Development on the reservation offers potential for tribes and individual entrepreneurs in manufacturing, agribusiness and modern technology, as well as fishing, livestock, arts and crafts and other traditional livelihoods.

Natural resources such as timber, fishing and energy provide an avenue of development for many tribes. Tribal governments have the responsibility to determine the extent and the methods of developing the tribe's natural resources. The federal government's responsibility should not be used to hinder tribes from taking advantage of economic development opportunities.

The top Indian official in the Reagan Administration is Kenneth L. Smith, a Wasco Indian from the Warm Springs Reservation in Oregon. He is the Assistant Secretary for Indian Affairs in the Department of the Interior.

With regard to energy resources, both the Indian tribes and the nation stand to gain from the prudent development and management of the vast coal, oil, gas, uranium and other resources found on Indian lands. As already demonstrated by a number of tribes, these resources can become the foundation for economic development on many reservations while lessening our nation's dependence on imported oil. The federal role is to encourage the production of energy resources in ways consistent with Indian values and priorities. To that end, we have strongly supported the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

It is the free market which will supply the bulk of the capital investments required to develop tribal energy and other resources. A fundamental prerequisite to economic development is capital formation. The establishment of a financial structure that is a part of the Indian reservation community is essential to the development of Indian capital formation.

Federal support will be made available to tribes to assist them in developing the necessary management capability and in attracting private capital. As a first step in that direction, we provided funds in the FY 1983 budget to provide seed money to tribes to attract private funding for economic development ventures on reservations. As more tribes develop their capital resource base and increase their managerial expertise, they will have an opportunity to realize the maximum return on their investments and will be able to share an increasing portion of the business risk.

It is the policy of this Administration to encourage private involvement, both Indian and non-Indian, in tribal economic development. In some cases, tribes and the private sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.

Since tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed. This Administration, therefore, is establishing a Presidential Advisory Commission on Indian Reservation Economies. The Commission, composed of tribal and private sector leaders, is to identify obstacles to eco-

nomic growth in the public and private sector at all levels; examine and recommend changes in federal law, regulations and procedures to remove such obstacles; identify actions state, local and tribal governments could take to rectify identified problems; and recommend ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies. It is also to be charged with the responsibility for advising the President on recommended actions required to create a positive environment for the development and growth of reservation economies.

Numerous federal agencies can offer specialized assistance and expertise to the tribes not only in economic development, but also in housing, health, education, job training, and other areas which are an integral part of reservation economies. It is to the advantage of the tribes, and in the interest of the taxpayers, that the federal role be fully reviewed and coordinated. Therefore, this Administration directs the Cabinet Council on Human Resources to act as a mechanism to ensure that federal activities are non-duplicative, cost effective, and consistent with the goal of encouraging self-government with a minimum of federal interference.

Summary

This Administration intends to restore tribal governments to their rightful place among the governments of this nation and to enable tribal governments, along with state and local governments, to resume control over their own affairs.

This Administration has sought suggestions from Indian leaders in forming the policies which we have announced. We intend to continue this dialogue with the tribes as these policies are implemented.

The governmental and economic reforms proposed for the benefit of Indian tribes and their members cannot be achieved in a vacuum.

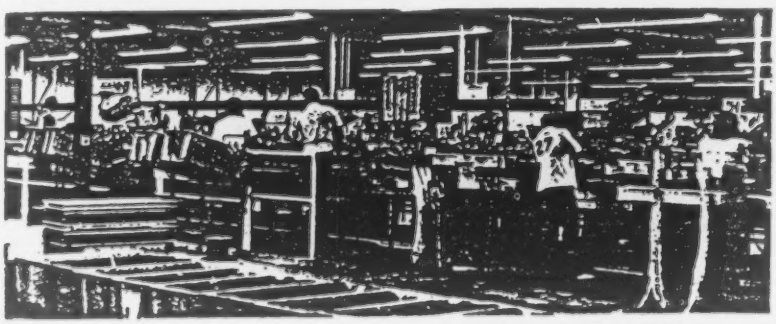
This nation's economic health – and that of the tribes – depends on adopting this Administration's full Economic Recovery Program. This program calls for eliminating excessive federal spending and taxes, removing burdensome regulations, and establishing a sound monetary policy. A full economic recovery will unleash the potential strength of the private sector and ensure a vigorous economic climate for development which will benefit not only Indian people, but all other Americans as well.

Policy Highlights

President Reagan's Indian policy supports:

- Explicit repudiation of the termination policy and philosophy of the past.
- Fulfillment according to the highest standards of the Federal trust responsibility.
- Strengthening of tribal governments and a reduction of Federal regulations and bureaucracy on reservations.
- Specific acknowledgment of the governmental status of Indian tribes.
- Direct funding rights for block grants for the tribes.
- A Presidential Commission to seek ways to improve reservation economies.
- Special assistance for small tribes to help build managerial capacities.
- Seed money to attract funding for economic development projects on reservations.
- Coordination of Federal Indian programs through the Cabinet Council on Human Resources.

Choctaw Indians in Mississippi manufacture electrical wire harnesses for General Motors cars and trucks. The enterprise, started by the tribe in 1979, was successful in almost doubling its business and its plant in years when many manufacturers in the automobile industry were struggling just to keep open. The tribe has created more than 600 jobs on the reservation through the development of tribal enterprises.



Senator NICKLES. Thank you, Mr. Cushman.

Our next witness is Vernon Young, superintendent of the Shidler Public School.

STATEMENT OF VERNON YOUNG, SUPERINTENDENT, SHIDLER PUBLIC SCHOOL

Mr. YOUNG. Senator Nickles, Senator Boren. I appreciate the opportunity to come to Washington and talk to you.

I have included a financial analysis in this report of the projected impact that the establishment of a national park area within the Shidler School District would cause. This analysis can be found in appendix A and B at the back of this report.

These figures are based on a map provided me by Senator Don Nickles' office. I have analyzed the impact on the finances of Shidler School only. The same information, but in varying amounts, would apply to the Pawhuska Public School and to a lesser extent to Osage County.

The tax revenue from a given area in Oklahoma that benefits a local school district is many-faceted. Without some knowledge in this area, one might assume that the only revenue to be derived would be the millage collection assessed upon the land itself. But as you can see from my projections, this is not the case.

As in any budgetary type projection, some assumptions must be made, and I would like to spell out some of these assumptions. First, land in Oklahoma is assessed on a parcel by parcel basis.

I do not have the exact assessment amounts for each specific piece of property available, so I have used a figure of $15 an acre as a reasonable estimate of the assessed value of the land in this particular area. This figure, along with the other ad valorem tax estimates, was provided to me by the Osage County tax assessor.

The estimate concerning the easement area needs some explanation. The bill as written permits a purchase price for the easement land of an amount not to exceed 60 percent of the fair market value. And I heard Director Mott say today that this easement type purchase recently has been going for closer to 70 percent of the fair market value.

This leads me to believe that the value of the easement land would be decreased by this figure. I would further assume that the assessed value for tax purposes would have to be adjusted by this purchase price.

Ad valorem tax is also collected on personal property. Therefore, I have estimated the tax that would be collected from a normal cattle operation on this section of Osage County using only the 24,320 acres of the designated park area that is located within the Shidler School District. It is not anticipated that the grazing operation on the easement area would be decreased. Therefore, I did not record any decrease.

The item referred to as public utilities includes REA electric lines serving the ranch houses and the oil wells and also underground transmission lines in the area. The assessment of these items of the public utilities is processed through the Oklahoma Tax Commission Office and specific details are not available to me.

Therefore, I calculated the percent of total school district evaluation as to the amount of land taken by the park and applied this percent to the total district public services assessment figure. I believe this is a fair calculation because there are several large underground pipelines in the area.

I feel very confident that the items listed to this point are realistic and will occur when the actual land purchases begin. The items listed as potential losses are not so concrete and could vary either up or down.

The most significant item deals with student count. In the past, under normal conditions and normal cattle and oil industry operations, there have been several families living in ranch houses throughout the proposed park area. Due to the slump in both cattle and oil industries within the past three years, the ranch owners have neither run as many cattle nor have they hired as many ranch hands as they actually needed.

One would normally expect that, with better times being forecasted in the cattle industry, that the families would be returning. In reality, it seems that the big ranches in the park area are seemingly waiting for the results of this Senate bill.

Individuals familiar with the history of the area advise me that 25 students is a reasonable projected loss due to the cutback in cattle operations in the park land. The value of $2,150 that I have listed per student is the amount of state and federal funds received on a per pupil basis. This does not consider the ad valorem value because I have considered it earlier.

The gross production is simply a percent of the total collections, and this assumes that future production would be curtailed, and this may not occur. However, as I prepare my long-range projections I must consider all the possibilities.

I feel very confident about these projections, but in all fairness they can and will vary under actual conditions. They can vary either up or down, but they actually probably are pretty close to actual.

The projected revenue section deals with the division of the $1.5 million. I am not sure about what the intent of the writers is, but for my estimates I merely determined the percent of park land within each school district. The county collects 10 mills off the total area and each school district is currently collecting 44 mills each, with no sinking funds for bonded indebtedness being collected at this time.

This calculation was made on the real property figures only, and it does not take into account personal property nor public utilities. In any event, the percentages probably would not change with the additional ad valorem amounts given.

As you can see, the projected share of the cash settlement will not come close to compensating for the loss to Shidler School. I made no—I am sorry.

Senator BOREN. Sir, what was the amount of the—what would be the Shidler Schools——

Mr. YOUNG. Close to $95,000.

Senator BOREN. And how much do you show by your figures is the actual loss?

Mr. YOUNG. Well, I am sorry, I did not understand your question. My decrease in revenues is estimated to be $125,000. My share of the $1.5 million as I have calculated it would be close to $600,000. And if I estimate, if I invest $600,000 at 5 percent, I would receive $30,000 annual income.

Senator BOREN. So your shortfall annually would be ——

Mr. YOUNG. Shortfall would be $95,000.

Senator BOREN. $95,000?

Mr. YOUNG. Yes, sir.

The board of education—I have not—and you need to understand that I have only calculated the loss to Shidler School, and Pawhuska School would be similar. Approximately half of the land, of the park land, is in Shidler School and half of it in Pawhuska School.

The easement area, I do not really know what is going to happen there, but two-thirds of the easement area is in Shidler School and one-third in Pawhuska School.

The board of education at Shidler School has taken an official stand against the proposed park from the first, due to the adverse effect on the financial condition of the school. I can only hope that, if the project is approved, that you will increase the amount of the actual cash contribution in order to compensate for the projected annual loss of $96,500 to the Shidler Public Schools.

It is my responsibility as an administrator to provide the best possible education for the children in my district, and I find it increasingly difficult to do this with continually declining financial resources. The $95,000 annual loss is approximately 10 percent of my total annual budget of $1 million.

Thank you very much for allowing me this input into the Committee.

[The prepared statement of Mr. Young follows:]

SHIDLER SCHOOLS

P. O. Box 85 - Phone 793-2021 - SHIDLER, OKLAHOMA 74652

Vernon Young
Superintendent

TO: The Honorable Dale Bumpers, Chairman, Subcommittee on Public Lands, National Parks and Forests

FROM: Vernon Young, Superintendent, Shidler Public School

SUBJECT: Senate Bill 1967 providing for the establishment of the Tallgrass Prairie National Preserve

DATE: May 26, 1988

I have included a financial analysis in this report of the projected impact that the establishment of a National Park Area within the Shidler School District would cause. This analysis can be found in Appendix A and B at the back of this report. These figures are based on a map provided by Senator Don Nickles' office. I have analyzed the impact on the finances of Shidler School only. The same information, but in varying amounts, would apply to the Pawhuska Public School and to a lesser extent to Osage County.

The tax revenue from a given area in Oklahoma that benefits a local school district is many faceted. Without some knowledge in this area one might assume that the only revenue to be derived would be the millage collection assessed upon the land itself, but as you can see from my projections this is not the case.

As in any budgetary type projections some assumptions must be made; I would like to spell out some of these assumptions. First, land in Oklahoma is assessed on a parcel by parcel basis. I do not have the exact assessment amounts for each specific piece of property available to me, so I have used a figure of $15 per acre as a reasonable estimate of the assessed value of

good grass land in that area. This figure, along with other ad valorem tax estimates, was provided to me by the Osage County Tax Assessor.

The estimate concerning the easement area needs some explanation. The bill as written permits a purchase price for the easement land of an amount not to exceed 60% of the fair market value. This leads me to believe that the value of the easement land would be decreased by this figure. I would further assume that the assessed value for tax purposes would have to be adjusted by 60%.

Ad valorem tax is also collected on personal property; therefore, I have estimated the tax that would be collected from a normal cattle operation in this section of Osage County using only the 24,320 acres of designated park land within the Shidler School District. It is not anticipated that the grazing operation on the easement area would be decreased; therefore, no decrease was recorded.

The item referred to as public utilities includes REA electric lines serving the ranch houses and oil wells, and underground pipelines. The assessment of these items is processed through the Oklahoma Tax Commission Office and specific details were not available to me. Therefore, I calculated the percent of total school district evaluation as to the amount of land taken by the park and applied this percent to the total district Public Services amount. I believe this is a fair calculation, because there are several large pipelines in the area.

I feel very confident that the items listed to this point are realistic and will occur when the land purchases begin. The items listed as potential

losses are not so concrete and could vary either up or down. The most significant item deals with the student count. In the past under normal cattle and oil industry times, there have been several families living in ranch houses throughout the proposed park area. Due to the slump in both industries within the past three years, the ranch owners have neither run as many cattle nor hired as many ranch hands as they actually needed. One would normally expect that, with better times forecasted in the cattle industry, the families would be returning. In reality it seems the big ranches in the park area are waiting for the results of this Senate Bill. Individuals familiar with the history of the area advise me that twenty-five students is a reasonable projected loss due to the cut back in cattle operations on the park land. The value of $2,105 per student is the amount of state and federal funds received on a per pupil basis. This does not consider the ad valorem issue, because it has been addressed earlier.

The gross production is simply a percent of the total collections, and this assumes that future production would be curtailed, and that may not occur. However, as I prepare my long range projections I must consider all possibilities. I feel very confident about these projections, but in all fairness they can and will vary under actual conditions. They can vary either up or down, but they are probably quite close to actual.

The projected revenue section deals with the division of the $1.5 million dollars. I am not sure what the intent of the writers is, but for my estimates I merely determined the percent of park land within each school district. The County collects 10 mills off the total area, and each school district is currently collecting 44 mills each with no sinking funds for bonded indebtedness being collected at this time. This calculation was

made on the real property figures only, and it did not take into account personal property nor public utilities. In any event the percentages probably will not change much when the additional ad valorem amounts are used.

As you can see the projected share of the cash settlement will not come close to compensating for the loss to Shidler School. I have made no calculations as to the loss to Osage County nor the Pawhuska School, but I can only assume they would be affected in the same general way.

The Board of Education of Shidler School has taken an official stand against the proposed Prairie Park from the first due to the adverse effect on the financial condition of the school. I can only hope that if the project is approved, you will increase the amount of initial cash contribution in order to compensate for the projected annual loss of $96,573 to the Shidler Public School. It is my responsibility as an administrator to provide the best possible education for the children in my district, and I find it increasingly difficult to do this with continually declining financial resources.

Thank you for allowing me input into this very important hearing.

Appendix A

Financial Impact Of
Prairie Park Preserve
On
Shidler Public School

Projected Decrease in Revenue

Real Property Loss:

24,320 acres @$15 average assessment value per acre	$364,800	
32,000 acres easement area @$15 x 60% est. decrease in value	288,000	
Projected decrease in evaluation	$652,800	
$652,800 x .044 (annual millage rate)=annual loss from real property		$ 28,723

Personal Property Loss from Park Area Only:

Cattle (80 head per section-1 bull per 20 cows) 2888 cows @2.16 / 152 bulls @4.32 =	6,894
50 head cattle horses @4.05	202
Improvements (buildings, corrals, hay barns)	9,364
Public utilities in park area (REA lines, oil and gas lines)	11,500
Total annual loss of ad valorem tax	56,683

Potential Loss Due to Change of Land Use:

25 students living on ranches & oilfield related work @2,105=	$52,625	
Motor vehicle tax(Loss of 30 vehicles @Avg. tag cost $75 =	2,250	
Gross production tax if exploration & production is curtailed	15,000	
Total potential loss		69,875
Total real and potential loss		$ 126,558

Appendix B

Projected New Revenue

Division of Land Between School Districts of Park Land:*

Shidler Public School	24,320 acres x $15 Avg. evaluation =	$ 364,800
Pawhuska Public School	25,238 acres x $15 Avg. evaluation =	378,570
Total assessed value of land within park area		$ 743,370

Individual Governmental Agency Collections Based on Above Estimate:

Osage County	743,370 x 10 mills =	$ 7,433	= 18.52%
Pawhuska Public School	378,570 x 44 mills =	16,657	= 41.50%
Shidler Public School	364,800 x 44 mills =	16,051	= 39.98%
		$ 40,141	100.00%

Cash Settlement Division:

Osage County	18.52% x 1.5 M =	$277,800
Pawhuska Public School	41.50% x 1.5 M =	622,500
Shidler Public School	39.98% x 1.5 M =	599,700
		$ 1,500,000

Shidler Public School Projected Earnings Annually:

$599,700 invested at annual rate of 5% =	$ 29,985

Total Real & Potential Loss (See Exhibit A)	$ 126,558
Total Projected New Revenue (See above)	29,985
Projected annual loss due to Prairie Park Impact	$ 96,573

* Calculations based on tax on real property only. Does not consider easement area, personal property or public utilities.

Senator NICKLES. Mr. Young, we thank you. I appreciate the work that you have done. I have Just a couple of comments concerning the study that you have put together.

One, it shows a potential loss due to the number of students being reduced. It would be my thought, my guess, and my expectation that you would see additional students, that you would see an additional number of people involved, I do not know exactly what.

Again, I think we have heard other people, and I am not one to jump out and say that there are going to be so many million people go through here every year. I do think there would be additional economic activity, and I do think you would see that help your student count.

I think that is the biggest part of your loss, the $69,000 from the estimated reduction in pupils. I think you would see your pupils going up.

You also had some decline in oil and gas tax and so on. I would hope that that would happen and would work to see that it would not happen. We have heard statements on both sides of the issue.

I want to point that out. I appreciate the work that you have done, and I appreciate the statements that have been made.

Senator Boren, did you have a comment to the panel?

Senator BOREN. I know we have kept everyone here a long time, but this is very helpful testimony. These figures that have been developed by the school district are very helpful, a concrete example of what we need to deal with here.

Let me ask this. And I visited Mr. Supernaw on the phone and he indicated that he is not necessarily opposed to the concept of preservation of this area and doing something to develop it in a way that it would be a tourist attraction, but worried about the lost mineral production and the other things.

Let me follow up. And again, I do not want to give the impression yet that I am advocating any alternative idea, because I just think we have got to explore everything at this point.

If the tribe were to have title, if the Osage Nation were to have title, to the surface of this area that is in the Shidler School District, what would be the impact? Would there still be the same tax impact, same loss of revenue?

Mr. YOUNG. I am not sure, Senator. I doubt if we would collect any tax, but I could not answer that question.

Senator BOREN. We would have the same problem from a tax point of view perhaps. I am not sure of the answer to that question myself.

Mr. YOUNG. Probably what would happen would be it would be involved in 874 impact aid.

Senator BOREN. That would help.

Mr. Supernaw, do you know what the answer to that would be?

Mr. SUPERNAW. I think the tax impact—mostly your fears are lost gross production taxes, are they not?

Mr. YOUNG. That is a big part of it.

Senator BOREN. The ad valorem.

Mr. SUPERNAW. And that would not affect that.

Senator BOREN. How much would be ad valorem, how much of your shortfall?

Mr. YOUNG. About half of it.

Senator BOREN. Half of it is ad valorem. We would have to still figure out what to do about ad valorem if we were to work out some sort of plan along those lines.

You know, one of my thoughts has been, we talk about trying to turn the Oklahoma economy around, and I will not dwell on this at length, but we have in Oklahoma some of the most—we know that we want to diversify our economy and everything else.

That is going to take time. We are talking about 10, 20 years down the road. We had some good news with Telex, Memorex, moving the high tech headquarters into Tulsa, and there has been some good news. But it is going to take some time.

We are going to have a lot of aircraft developments, if we can convince Senator Bumpers on some basing of some planes. And we are going to have some aircraft production at Tulsa of a major scale.

We are going to have some other important things going on with Stealth bomber maintenance at Tinker Field. So we are seeing that happen.

But in the short run, cattle prices have helped. We know that agriculture and oil and gas are the only things to bring us back in the short run, except for tourism. And I have felt that there is no finer collection, for example, than the Guilcriese, there is no finer collection of Western art, artifacts, in the world.

Wooly Rock is just—I had not seen it since I was a kid. I went back and spent a couple of days there not too long ago. It is incredible what is there.

Guthrie was mentioned, I do not know if approvingly or not. But I would like to see us restore the old buildings. You know, modernizing everything always is not the best way; if we could take the false fronts off, put it back.

We have got all sorts of things—the Chalikee Drum in the summer. There are lots of just wonderful things. And I have felt that for a quick infusion into the Oklahoma economy—I am talking about getting some cash in to put people back to work, keep them from losing their farms and everything else.

The right kind of tourist development would not even require a lot of expenditure, not compared to what it would take for industries and so on. And it is clean and it is not very obtrusive compared to other things.

And I wonder if the tribe—and of course, I realize you cannot speak, and I do not want to put Ralph or the council or anybody on the spot. They are like me, they have to talk to their constituents and see what the members all feel. Would there be any interest in trying to, going on what Mr. Mattingly said, if the tribe were to become involved in some way, would there be a willingness to also be involved in developing this in terms of having some sort of capability of attracting people to it, having a cultural interpretation center or something else, do you think?

Because in other words, I can see this, it is not only a wonderful natural area, but if we could use it as a magnet, because we have got so many other things right around there in what we call grain country. You know, you could put together a 3- or 4-day package that would attract people from all over the world, really.

I took some people from other countries there recently, and I took a visitor from Australia to the Osage, for example, and then we went over and we saw the drama at Chaligee, and we went to the Roy Rogers Memorial. He went all over the United States this summer, and do you know what he said was the greatest place he visited? It surprised me. He said Oklahoma. He was thrilled to death with what he saw. It is what he thinks of as really America.

Would there be some sort of a willingness to explore this kind of thing?

Mr. BOLTON. Senator Boren, I consulted an economics expert from the University of Illinois—I can't remember his name exactly; I think it was Dr. Spakes—and asked him, would he make some kind of an economic study on northeastern Oklahoma to see whether or not any kind of an attraction would be economically feasible.

And he looked at the area and he said positively not.

Senator BOREN. Well, I do not agree with that, because I think there is just a tremendous—you know, we have got so much to be proud of in our area that I think really would—it is possible.

But again, I am just wondering if there is a potential of exploring that.

Senator NICKLES. Senator Boren, I appreciate your comments. It is necessary for me to leave.

Senator BOREN. I am going to have to leave, too.

Mr. CUSHMAN. Senator Nickles, could I just clarify one thing? I shook my head earlier when you spoke about grazing, and I should mention to you that you cannot have research and you cannot introduce buffalo and elk and have the same volume of grazing on the same ground.

Every economic study says there is going to be a reduction in grazing. All we are arguing about is how much, not if there is going to be a reduction.

Senator BOREN. It has to be a reasonable——

Mr. CUSHMAN. There is going to be a sharp reduction.

Senator NICKLES. I appreciate your comment.

Senator BOREN. Let Mr. Supernaw answer just that one last question and then we will have to stop.

Mr. SUPERNAW. I think that that could be explored, and I want to say one thing.

A common thread that runs through all of the opposition is that the general fear of everyone is that, no matter how honest and how skilled the framers of this legislation might be, it just cannot work because the law would have to guarantee that your offspring were as honest and that the Park Service and the Sierra Club would not do what they exist only to do.

And I think that is the underlying fear.

Senator BOREN. One of the reasons for the concept of bringing the tribe into some sort of an ownership situation would be aimed at combating that fear, as I understand it.

Mr. SUPERNAW. I think it would.

Senator NICKLES. I appreciate your comment. I want to thank all of our panelists for their efforts, for traveling this far, for your attention to a hearing that lasted four and a half hours. That is a long time, and I appreciate your patience.

We will keep the record open for additional comments and also for questions. I think there are a few things. I know I have some additional questions for Director Mott and possibly some others. Chairman Bumpers may have some additional questions as well.

If there are additional statements for the record, we would appreciate it if you would give them to our staff.

I think the question was brought up "where do we go from here?" Certainly I will be working with Senator Bumpers and Senator Boren and Congressman Edwards and with others to try and move in a positive way to address a lot of the concerns that have been made this year.

Thank you all very much. The hearing is adjourned.

[Whereupon, at 2 p.m., the hearing was adjourned.]

[COMMITTEE NOTE.—Due to the voluminous nature of materials submitted for the record all additional statements and letters have been retained in subcommittee files.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 27 1988

L58(180)

Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Bumpers:

Enclosed are our responses to the questions submitted with your letter of June 7 on S. 1967, the proposed Tallgrass Prairie National Preserve legislation.

We appreciate the opportunity to supplement our testimony.

Sincerely,

Philip G. Kiko
Legislative Counsel

Enclosure

QUESTIONS FOR WILLIAM PENN MOTT, JR.

Question 1: Do you think that the Osage mineral estate will be affected by the passage of this bill?

Answer: No. The language contained in sections 2 and 4 of S. 1967 is very explicit in stating that the mineral estate of the Osage Tribe cannot be acquired by the Secretary and that the mineral estate will continue to be subject to regulations administered by the Bureau of Indian Affairs, not the National Park Service (NPS).

Question: Would you describe mineral activity in other units of the National Park Service?

Answer: Currently there are 509 active mineral operations in 22 units of the National Park System, including 3 operations in Alaska. All operations are in accord with existing law. They occur because the Federal government has not extinguished the underlying property right through acquisition or, in the case of four National Park System units, Congress has explicitly allowed for the establishment of new mineral rights through the issuance of Federal mineral leases. In the latter case, leases can only be issued if the Secretary of the Interior determines that no significant adverse impacts will occur to park resources or administration as a result of subsequent mineral development. The NPS has several sets of regulations governing mineral development within the boundaries of units. The determinate factor as to which set of regulations must be complied with for a given mineral operation is the nature of the property right underlying

the mineral. Mining claim operators must comply with the requirements contained at 36 CFR Part 9, Subpart A; non-Federal oil and gas operators must adhere to the requirements at 36 CFR Part 9, Subpart B; and Federal mineral lessees inside parks must comply with the requirements at 43 CFR Parts 3100 or 3500. NPS controls the development of non-Federal mineral rights other than oil and gas on a case-by-case basis through special use permits.

The cornerstone to the NPS's regulation of mineral development is the requirement that operators have an approved plan of operations prior to the commencement of any mineral development in a park unit. In a plan of operations, an operator specifically identifies what mineral development activities will be undertaken and how park resources and values will be protected. Plans are subjected to review and compliance with the National Environmental Policy Act of 1979, the Endangered Species Act, and all other applicable conservation laws.

Question: What problems have been encountered?

Answer: By and large, most operators comply with the requirements of their approved plans of operations. However, in a few instances, NPS has encountered recalcitrant operators and has had to resort to legal action to secure regulatory compliance.

A burgeoning problem area related to past mineral development that NPS is working to ameliorate concerns abandoned operations. For example, abandoned oil and gas wells at Cuyahoga Valley National Recreation Area and Big Thicket National Preserve have generated brine kill areas, oil saturated soils, and corroding equipment that pose both resource and visitor safety problems. Comprehensive and systematic surveys are currently underway to determine the extent of the problems.

Question 2: Does the Park Service foresee any difficulties in managing such a discontiguous ownership?

Answer: No. The Service already successfully administers discontiguous ownerships at Big Cypress and Big Thicket National Preserves.

Question 3: Are the Bureau of Indian Affairs (BIA) regulations restrictive enough to adequately protect the proposed Preserve?

Answer: Yes.

Question 4: You have testified that the Park Service estimates expenditure of $24.6 million for acquisition within the Preserve. How does that figure compare with the Park Service's current budget for acquisition?

Answer: The National Park Service's budget request for land acquisition for Fiscal Year 1989 totals $12,369,000.

Question: You stated in your testimony that there are authorized but unacquired lands at both Voyageurs National Park and Cuyahoga Valley NRA. How much total land has the Park Service been authorized to buy but has yet to acquire?

Answer: There are 2.3 million acres of private land remaining in the National Park System. Based on each area's land protection plan there is an estimated 300,000 acres of private land remaining to be protected. This figure excludes any private land to be acquired in Alaskan parks.

Question: What is the total dollar figure associated with the acquisition of those lands?

Answer: It is estimated that approximately $1 billion is needed to acquire the remaining 300,000 acres of private land.

Question 5: The proposed Tallgrass Prairie Preserve would include both fee land and easements. How do you foresee the easements being managed in comparison with the fee land?

Answer: The public will not have access to easement lands and the Secretary will not have authority to issue grazing or other permits on easement lands. Easement lands will be managed and used as their owner sees fit, except that NPS will acquire and pay for an interest sufficient to assure management consistent with the purposes of the preserve, no other commercial uses, and limitations on new construction. No regulations applicable to use of Federal lands will apply on easement lands.

On fee (surface estate) lands, NPS user regulations (except for oil and gas) will apply, the public will have access, the Secretary may issue grazing or other permits, and the Secretary will manage the resources in accordance with the purposes of the preserve.

Question 6: Does the provision in the bill preserving existing oil and gas exploration, development and production relate only to existing leases or will it allow future lease sales in the areas subject to fee ownership or to easements?

Answer: NPS interprets the language at section 2(b) and section 4(b) to pertain to both existing and future leases.

Question 7: Since other minerals, including sandstone, limestone and coal are known to exist in the areas proposed for the Preserve, will future development of these mineral resources be allowed within the Preserve?

Answer: Yes. Section 2(b) states that the "Secretary may not acquire any interest in the mineral estate within the boundary of the Preserve..." Given that NPS is precluded from purchasing any mineral rights and currently lacks comprehensive regulations governing non-Federal minerals other than oil and gas as discussed in Question 1, above, NPS will manage the Federal surface estate in the event that these minerals are developed on a case-by-case basis via special use permits.

Question: If the Osage Tribe seeks to develop minerals other than oil and gas within the preserved boundaries, for example, by quarrying or pit mining, how will the purposes of the Preserve be affected?

Answer: The answer to this question is wholly dependent on the specific nature of the proposed mineral development. Without specific information on where the proposed development would occur and how long it would last, we could not determine its effect on the purposes of the Preserve. However, it is obvious that any extensive groundbreaking would not be consistent with the stated purpose of S. 1967 in section 1(a)(1), to preserve a nationally significant example of tallgrass prairie that depicts the scenes characteristic of the tallgrass ecology.

Question 8: The use of fire as a management tool on the proposed Preserve has been controversial. While some experts feel that fire is necessary for proper prairie maintenance, it also might be hazardous to livestock, wildlife, property and people. Do you feel that lives and property can be adequately protected from fire?

Answer: Section 6(b)(2) of the bill requires that the general management plan for the Preserve include a resources management plan for tallgrass prairie grasslands management. Section 8(c)(2) of the bill specifically includes prescribed burning as a management tool that may be authorized in the plan. The NPS currently uses prescribed burning as a management tool in old growth forest stands in order to remove accumulations of combustible vegetation which constitute a wildfire hazard. This activity is carried out in accordance with management plans and has not resulted in hazards to lives or property. We believe that, if prescribed burning is determined to be an appropriate management tool at Tallgrass Prairie National Preserve, it can and will be used without hazard.